

1 UNITED STATES DISTRICT COURT  
 2 EASTERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 -against-

6 ABRAXAS J. DISCALA, ALSO  
 7 KNOWS AS AJ DISCALA, AND  
 8 KYLEEN CANE,

Defendants.

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 10 TRANSCRIPT OF CRIMINAL CAUSE FOR TRIAL  
 11 BEFORE THE HONORABLE ERIC N. VITALIANO  
 12 UNITED STATES DISTRICT JUDGE  
 13 BEFORE A JURY

12 APPEARANCES

13 For the Government: UNITED STATES ATTORNEY'S OFFICE  
 14 Eastern District of New York  
 15 271 Cadman Plaza East  
 16 Brooklyn, New York 11201  
 17 BY: SHANNON JONES  
 MARK E. BINI  
 PATRICK HEIN  
 Assistant United States Attorneys

18 For the Defendant: CHARLES ROSS & ASSOCIATES, LLC  
 19 Abraxas J. Discala 111 Broadway  
 New York, New York 10008  
 20 BY: CHARLES ROSS, ESQ.  
 MATTHEW SHROYER, ESQ.

21 ANDREW BOWMAN, ESQ.  
 1804 Post Road East  
 Westport, Connecticut 06880

22 HANWEI CHENG, ESQ.  
 23 15155 Gale Avenue  
 Suite D  
 24 Whittier, California 90603

25

1 A P P E A R A N C E S: (Continued)  
Attorney for Defendant: SERCARZ & RIOPELLE, LLP  
2 Kyleen Cane 810 Seventh Avenue  
Suite 620  
3 New York, New York 10019  
BY: ROLAND RIOPELLE, ESQ.  
4 ROBERT CALIENDO, ESQ.

5 Court Reporter: LINDA D. DANIELCZYK, RPR, CSR, OCR  
6 Phone: 718-613-2330  
Fax: 718-804-2712  
7 Email: LindaDan226@gmail.com

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1 (In open court; Jury not present.)

2 THE COURTROOM DEPUTY: All rise. Court is now open.  
3 The Honorable Eric Vitaliano presiding. The case on the  
4 calendar is *U.S.A. versus Discala and Cane*, Case Number  
5 14-CR-399 on for a jury trial.

6 Will the attorneys please not their appearance  
7 beginning with government counsel.

8 MS. JONES: Shannon Jones, Mark Bini and Patrick  
9 Hein for the United States, along with Henry Ishitani and FBI  
10 Agent Special Elyse Morris.

11 THE COURT: Good morning.

12 MS. JONES: Good morning, Judge. Charles Ross,  
13 Matthew Shroyer and Scott Schwartz for Mr. Discala.

14 MR. BOWMAN: Good morning, Your Honor. Anthony  
15 Bowman for Mr. Discala.

16 MR. CHENG: Good morning, Your Honor. Hanwei Cheng  
17 for Mr. Discala.

18 MR. RIOPELLE: Good morning, Your Honor. Roland  
19 Riopelle and Robert Caliendo for the defendant Kyleen Cane  
20 this morning.

21 THE COURT: Good morning.

22 THE COURTROOM DEPUTY: Counsel for both sides  
23 present, including the defendants.

24 MR. ROSS: Judge, may we have just a moment.

25 THE COURT: Sure. Do you have any housekeeping?

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1 MR. HEIN: Your Honor, we wanted to raise just one  
2 housekeeping matter.

3 After the redirect and recross of the witness, we  
4 think it would make sense, and obviously it depends how long  
5 that is, but regardless, to have a sidebar and see about the  
6 giving the jury a break to get some food.

7 What we would prefer not to have happen is that we  
8 break the closing for a longer lunch, but instead do the  
9 entire closing after they've eaten. So whether that would  
10 mean breaking for an early lunch, or at least giving them a  
11 chance to get something to eat so that we can complete the  
12 whole closing before they wait for a bigger lunch.

13 If that's amenable with Your Honor, I think that  
14 would be preferable.

15 THE COURT: We'll see where we're at.

16 MR. HEIN: That sounds great. We just wanted to  
17 raise it again.

18 THE COURT: Okay.

19 Are you following your gut, Mr. Riopelle, with  
20 cross?

21 MR. RIOPELLE: No, we're not going to have any  
22 questions, Judge.

23 (Pause.)

24 (Jury enters the courtroom.)

25 THE COURT: Be seated, please.

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1 Counsel will the stipulate that the jury is present  
2 and properly seated.

3 MS. JONES: Yes, Your Honor.

4 MR. RIOPELLE: Agreed, Judge.

5 THE COURT: All agreed. Thank you, counsel.

6 Ladies and gentlemen, welcome back. We are ready to  
7 proceed.

8 When we finished up yesterday, Mr. Bini was finished  
9 his cross-examination of Mr. Discala. Mr. Discala has resumed  
10 the stand.

11 I remind him that he remains under oath.

12 Mr. Riopelle, I ask whether or not Ms. Cane has any  
13 cross.

14 MR. RIOPELLE: Pardon?

15 THE COURT: Does Ms. Cane have any cross?

16 MR. RIOPELLE: No. No, Your Honor, we have no  
17 cross-examination for this witness.

18 THE COURT: Mr. Bowman then on redirect.

19 MR. BOWMAN: Thank you, Your Honor.

20 May I proceed?

21 THE COURT: You may.

22

23

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DISCALA - REDIRECT - BOWMAN

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1 (Witness takes the witness stand.)

2 **ABRAXAS DISCALA**, called as a witness, having been previously  
3 first duly sworn/affirmed, was examined and testified first  
4 duly sworn/affirmed:

5 REDIRECT EXAMINATION

6 BY MR. BOWMAN:

7 Q Mr. Discala, yesterday Mr. Bini played a tape recording  
8 of a conversation on May 6th, 2014. And as part of that  
9 conversation, you said, "And I got to do all the work, okay.  
10 And this is a perfect play for me because as soon as I get the  
11 fundamentals, this thing will go."

12 What are the "fundamentals"?

13 A Fundamentals are productive cash flow, cash flow  
14 positive, joint ventures, the deal that we were doing with  
15 Scanbuy. The deal we were do with Ping Mobile. The deal we  
16 were doing with Wikipay. The contracts from Yellow Pages,  
17 British Telecom.

18 Once the word got out that this company was  
19 executing on its business plan, that I believed that the stock  
20 would really go.

21 Q And that is it you called the fundamentals?

22 A That's what fundamentals are.

23 MR. BOWMAN: May I have Exhibit 177-22.

24 (Exhibit published.)

25 Q Mr. Discala, do you recall that Mr. Bini had asked you

1 some questions about this exhibit yesterday?

2 A I do.

3 Q Now when did CodeSmart go public?

4 A May 13th.

5 Q And do you recall when you first started trading?

6 A The first trade was May 22nd.

7 Q Now, with respect to the Exhibit 177-22, I'm going to ask  
8 you to look to the lower left and ask you: How many  
9 free-trading shares were available to you, OmniView and  
10 Fidelis as of May 21, 2013?

11 A As per this document?

12 Q Yes.

13 A 910,208 of that 29,000 were restricted.

14 Q And yesterday Mr. Bini asked you about a peak price of  
15 CodeSmart trading.

16 Do you recall what that was?

17 A \$13.88.

18 Q Now, has there been agreement between the defense and the  
19 government that you had approximately \$1.86 million in profit  
20 from trading CodeSmart?

21 A Yes, a 4,000-dollar discrepancy.

22 Q And based on questioning yesterday on cross-examination,  
23 what was your average sale price per share of CodeSmart?

24 A 900,000 shares at 1.8 million, would be about \$2. Maybe  
25 just over \$2, \$2 and a couple pennies.

DISCALA - RECROSS - BINI

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1 Q And is that at or near the peak of \$13.88?

2 A \$13.88, no.

3 Q How far is it from the peak?

4 A 86 percent away.

5 Q After selling your shares in CodeSmart, why didn't you  
6 start buying?

7 A Because there was \$1.93 million of dumping going on from  
8 Mr. Salvani and Mr. Walsh.

9 Q With respect to CodeSmart, did you beneficially own more  
10 than 5 percent of the company's common stock at a time when  
11 you were required to file a Schedule 13D as a result of that  
12 company being a Section 12 reporting company?

13 A No.

14 MR. BOWMAN: I have no further questions, Your  
15 Honor.

16 THE COURT: Thank you.

17 Any redirect by you Mr. Bini?

18 MR. BINI: Just very briefly, Your Honor.

19 THE COURT: With those few questions, there has to  
20 be not many.

21 RECROSS-EXAMINATION

22 BY MR. BINI:

23 Q I just wanted to ask you about the May 6th, 2014 call.

24 Could you just show up the transcript. I don't want  
25 to play any call, I just want to show the transcript.



DISCALA - RE CROSS - BINI

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1           Mr. Bowman asked you about this response where you  
2 talked about the fundamentals to Mr. Turino. Is that right,  
3 sir?

4       A     Yes.

5       Q     What did you say before you spoke about the fundamentals?  
6 What did you say about whether or not anyone would see if the  
7 Cubed works? What were your words, sir?

8       A     This was May 6th prior to the launch on android and IOS.

9       Q     I would just ask you to tell me what your words were  
10 about if you would be out before the Cubed works.

11       A     I facetiously said, "Because we didn't control any of the  
12 stock, once the demand came in and the escrow sold the stock,  
13 we have no control. So we would be out, as we were talking  
14 about the Scanbuy joint venture, which would have given it  
15 11-and-a-half-million users SkyTel in the Yellow Pages."

16           So once those announcements got out --

17           MR. BINI: I would ask to strike the answer, Your  
18 Honor.

19           MR. ROSS: Objection.

20           MR. BOWMAN: Objection.

21           THE COURT: I'm going to let it stand because it's  
22 over.

23           You can answer the question.

24       Q     In fact, sir, didn't you say to Mr. Turino:

25           "By the way, this is what I also told them. While

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1 the company succeeds, you know, what I told them, JT would be  
2 proud because you're not betting on the company, boys, you're  
3 betting on me, because we'll be out before the F'ing company  
4 will even see if the Cubed works," okay.

5 A They were betting on me to put in the management, to put  
6 in the board, have Mike Wehrs, Eric Engstrom join the board.

7 THE COURT: The question is: Did you say that?

8 THE WITNESS: Yes, I said that.

9 MR. BINI: No further questions, Your Honor.

10 THE COURT: Okay.

11 Anything further?

12 MR. BOWMAN: Nothing further.

13 THE COURT: Then you're excused, Mr. Discala.

14 (Whereupon, the witness was excused.)

15 MR. ROSS: Judge, the defense rests.

16 THE COURT: All right.

17 Ladies and gentlemen, we now have both defendants  
18 have rested, and I assume there is no rebuttal case.

19 MS. JONES: No, Your Honor, there is not.

20 THE COURT: Okay. So we've come to a building block  
21 being completed again, which is a way of saying there are more  
22 building blocks to come, so the case isn't over by any stretch  
23 of the imagination. The evidence producing part of the case  
24 is over.

25 Continue to keep an open mind. You may get a chance

1 to do a little exercise today, because any time we reach the  
2 end of a building block, it's time for the court to huddle  
3 with the lawyers, and when it's a building block kind of end,  
4 it's easier for all of us to do in a more open setting. So  
5 rather than going to sidebar, we are going let you take a few  
6 minutes rest in the jury room.

7 Don't discuss the case among yourself, or with  
8 anyone that you should run into back there. Continue to keep  
9 an open mind.

10 (Jury exits the courtroom.)

11 THE COURT: Before we move forward with the case,  
12 we'll talk about the scheduling along the lines with Mr. Hein  
13 to put us in the scheduling mindset.

14 MR. ROSS: Judge, Mr. Discala moves for a dismissal  
15 of the charges for a failure under Rule 29 of the government  
16 to prove a prima facie case sufficient to go to the jurors.

17 THE COURT: Mr. Riopelle.

18 MR. RIOPELLE: Yes, Your Honor. Defendant Cane also  
19 moves pursuant to Rule 29 of the Federal Rules of Criminal  
20 Procedure for a dismissal of the government's case at this  
21 time.

22 THE COURT: On behalf of the United States.

23 MS. JONES: Your Honor, the government believes that  
24 we proved to provide more than sufficient evidence for a jury  
25 to find that both the defendants are guilty beyond a

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1 reasonable doubt.

2 THE COURT: The motions are made, the Court  
3 continues to reserve decision.

4 Let's talk about scheduling.

5 Mr. Hein, I think -- I know when we first talked  
6 about it, you wanted to have a mini break somewhere in the  
7 middle. I think where we are is to get you all in before  
8 lunch, but I'm perfectly prepared to take a little break in  
9 the middle to give everybody a chance to catch up.

10 MR. HEIN: Your Honor, I think that will work well.

11 THE COURT: Okay. So are you ready to go now?

12 MR. BINI: Yes, Your Honor. Five minutes, if that's  
13 all right.

14 THE COURT: We'll stand at ease for five minutes and  
15 we can reconfigure the courtroom.

16 I know everybody's going to have to move, the  
17 reporter, and you. And also get yourself ready and we'll come  
18 back in about five minutes.

19 MR. HEIN: Thank you, Your Honor.

20 (Whereupon, a recess was taken at 10:38 a.m.)

21 THE COURTROOM DEPUTY: All rise. Court is back in  
22 session.

23 Counsel for both sides present, including the  
24 defendants.

25 THE COURT: Okay, we're ready to go. William will

1 bring in the jury.

2 (Jury enters the courtroom.)

3 THE COURT: Be seated, please.

4 Counsel will stipulate that the jury is present and  
5 properly seated.

6 MS. JONES: Yes, Your Honor.

7 MR. ROSS: Agreed, Judge.

8 MR. RIOPELLE: So stipulated.

9 THE COURT: Counsel, thank you very much.

10 Ladies and gentlemen, we're ready to begin that next  
11 building block. And if you recall from the instructions that  
12 you received at the very beginning of the trial, the next  
13 building block is summations or closing arguments by counsel.

14 From this point forward, you will be hearing no  
15 evidence. All of the evidence is already in. What you're  
16 going to hear from counsel are their arguments to you about  
17 what the evidence has proved or what it has not been proved.

18 You will also recall that the government has the  
19 right to open and close the debate. So you will hear an  
20 opening argument on behalf of the government, then each  
21 defendant will have an opportunity to make their argument.

22 You will recall, the government has the right to  
23 close the debate, which means that when a lawyer for the  
24 defendant sits down, that lawyer can't get up again. That  
25 lawyer will be complete. So pay careful attention to each of

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1 the closing arguments that are made by counsel, and, of  
2 course, separately consider the evidence with respect to each  
3 defendant.

4 So to begin the closing arguments, I will call on  
5 Assistant United States Attorney, Patrick Hein. Mr. Hein will  
6 give me a signal somewhere in the middle of his summation to  
7 signal a time to take a break, and which we will do so.

8 Mr. Hein.

9 MR. HEIN: Thank you, Your Honor.

10 MR. HEIN: Over the past month, you have seen and  
11 heard overwhelming evidence proving that the defendants,  
12 Abraxas Discala and Kyleen Cane, led a criminal conspiracy to  
13 steel money from investors.

14 They did this by obtaining control of the shares of  
15 certain companies. Artificially inflating the price of those  
16 shares, and profiting at their investors expense.

17 Discala and his co-conspirators began their scheme  
18 with CodeSmart. They purchased all of the free-trading  
19 shares, meaning the shares that were tradeable on the market,  
20 for pennies. And then they began matching their trades to  
21 walk the price of the stock up.

22 Discala instructed corrupt brokers to buy CodeSmart  
23 shares at increasing prices in their customer's accounts, as  
24 Discala and his co-conspirators sold their shares for huge  
25 profits.

1           Discala directed the same manipulation scheme of two  
2 other companies, StarStream and the staffing Group.

3           After Discala drove CodeSmart stock price into the  
4 ground, he started manipulating another company, Cubed. He  
5 recruited Kyleen Cane, who brought something special to this  
6 scheme, the escrow account.

7           Cane's escrow is special because in it she, and she  
8 alone, controlled all of Cubed's free-trading shares. She  
9 then sold those shares to Discala and other co-conspirators in  
10 rigged trades to walk the price of Cubed up.

11           She made over a half a million dollars in profits  
12 and was prepared to make much more when she and Discala were  
13 arrested by the FBI.

14           Because of Discala's and Cane's fraud, investors  
15 lost millions. You heard from several of these victims. They  
16 invested in CodeSmart and Cubed because the defendants and  
17 their co-conspirators misled them into believing that these  
18 companies had promising products and strong growth potential.  
19 But the defendants and their co-conspirators didn't tell these  
20 victims that they were manipulating these stocks.

21           And you heard what happened to these victims when  
22 CodeSmart's and Cubed's stock price collapsed. They no longer  
23 had money to use for their children's college education. They  
24 no longer had money to send their children to daycare.

25           Ladies and gentlemen, when my colleague, Mr. Bini,

1 stood before you a month ago, he told you that Discala and  
2 Cane artificially rigged the prices of stocks to steel money  
3 from investors. And that is precisely what the evidence has  
4 shown.

5 Now this has been a long trial and we thank you for  
6 your patience. Now is our opportunity to walk through the  
7 witness testimony and the exhibits that have come into  
8 evidence. I'm not going to address every witness or every  
9 document, but I'm going to highlight for you the key evidence  
10 and show how it proves beyond a reasonable doubt that the  
11 defendants are guilty of each crime of which they've been  
12 charged.

13 Now, one note before I turn to those charges. You  
14 won't be able to take the PowerPoint slides that I'm going to  
15 go through here this morning with you back into the jury room,  
16 because they are just summaries of the evidence. But I tried  
17 to note the exhibit number and the transcript page that I'm  
18 referencing as we go through the slides. So you can review  
19 those documents during your deliberations, if you so wish.

20 Let's look at the defendants' fraudulent scheme.

21 Defendants, Discala and Cane, defrauded investors in  
22 CodeSmart, StarStream, Staffing Group and Cubed by  
23 artificially controlling the price and trading volume of  
24 shares in these companies. And they did this through the  
25 fraudulent concealment of their and their co-conspirators's



1 ownership of these shares by engineering price movements and  
2 trading volume in the stock; by purchases of stock for  
3 unwitting investors, and through misleading press releases and  
4 SEC filings.

5 Now, as you know, Discala participated in this  
6 scheme with respect to CodeSmart, StarStream, Staffing Group  
7 and Cubed. Ms. Cane participated in the scheme with respect  
8 to Cubed.

9 And I'm going to go through these different steps  
10 they took to carry out the scheme as we go through the  
11 evidence today.

12 Let's take a look at the charges. Here are the  
13 counts with which the defendants have been charged. And I  
14 want to go through this briefly before we get into the  
15 evidence.

16 There are ten counts. Discala's been charged with  
17 all ten. Cane charged with three of those ten.

18 As you look at the left column, you will see the  
19 count number, One through Ten. The second column you will see  
20 the charge. The third, the companies that pertain to that  
21 charge. And in the fourth column, which defendant has been  
22 charged with which count.

23 Now, the first count, Count One, securities fraud  
24 conspiracy.

25 Discala's been charged with that count with respect

1 to all those four of those companies that are listed:  
2 CodeSmart, StarStream, Staffing Group, and Cubed. Cane with  
3 respect to Cubed.

4 And if you look at Counts Three and Four, you will  
5 see those are also securities fraud counts; three with respect  
6 to Cane, four with respect to Cubed.

7 Now, Judge Vitaliano will walk through the law with  
8 you after summations, and what he says controls. But I want  
9 to give you a brief preview of the law.

10 So first on the securities fraud counts, Count  
11 One -- excuse me Count One, Three and Four.

12 To prove securities fraud, we need to prove that in  
13 connection with the purchase or sale of the security, the  
14 defendants knowingly participated in what's called a "scheme"  
15 or "artifice to defraud". And that they used interstate  
16 communications to further that scheme.

17 And you will hear that a scheme or artifice to  
18 defraud just means a fraudulent scheme. And that really just  
19 means to deceive or gain an advantage over another person by  
20 lies or false representations.

21 And interstate communications can be telephone  
22 calls, emails, texts.

23 Now, looking at Count Two, wire fraud and mail fraud  
24 conspiracy. Again, Discala charged with respect to all four  
25 companies, Cane as to Cubed.

1           And if you look at Count Five through Ten, which are  
2 charges of wire fraud counts, and only Discala's charged with  
3 those.

4           Now, wire fraud provides -- excuse me, is a crime if  
5 the defendants knowingly participated in a fraudulent scheme  
6 and used interstate wires to further that scheme.

7           Again, wire is a telephone, an email or a text. But  
8 very similar to the securities fraud charge, except it doesn't  
9 have to be in connection with the purchase or sale of the  
10 security.

11           And as to Counts Five through Ten, you will see each  
12 of those are telephone calls that Discala made. And you'll  
13 hear from the judge that a wire fraud, each call is itself a  
14 crime, if each individual wire or call is made in furtherance  
15 of the fraudulent scheme. And I'll walk through that later.

16           Now, the final thing I want to point out is that the  
17 first two counts are conspiracy counts. And conspiracy simply  
18 means the defendant knowingly joined an unlawful agreement to  
19 commit the first count, securities fraud, and the second  
20 count, wire fraud and mail fraud.

21           The final thing I want to point out is that for  
22 securities fraud conspiracy, it requires an overt act. And an  
23 "overt act" is simply an act taken to further an objective of  
24 the conspiracy.

25           And there are 13 overt acts that are charged and

1 I'll walk through them with you today: They are emails,  
2 calls, and prove those to you as well.

3 At the end of this presentation, after I've walked  
4 through all the evidence, I'll come back to these charges and  
5 show you how the evidence proves beyond a reasonable doubt  
6 that these defendants are guilty of the crimes charged.

7 So let's turn to the first scheme, the CodeSmart  
8 scheme.

9 Discala and his co-conspirators obtained and  
10 concealed their control of their CodeSmart free-trading  
11 shares. They then artificially inflated the price of those  
12 shares, and victims lost money.

13 We're going to look at each one of those. First  
14 now, Discala's control over CodeSmart's free-trading shares.

15 Now as you learned from various witnesses, Discala  
16 obtained control of these shares through a reverse merger of  
17 CodeSmart in a company called First Independence, which was a  
18 shell company that worked on portable foods, which was merged  
19 into CodeSmart.

20 And you heard from Deb Oremland, the expert from  
21 FINRA, who defines some of these terms for you.

22 A "shell company" is a public company that has no  
23 operations, really no business, and limited assets.

24 And a "reverse merger" is when a private company,  
25 such as CodeSmart, merges into that shell company, and then

1 CodeSmart comes out being the public company.

2 And I'm going to go through how Discala obtained  
3 control of the CodeSmart shares through that reverse merger.

4 We went through this exhibit with Marleen Goepel.  
5 And you remember Marleen Goepel. Marleen Goepel was Discala's  
6 secretary. She pled guilty to securities fraud, because she  
7 permitted Discala to hold the shares under her name and trade  
8 in her account. And you recall her telling you that he said  
9 he needed to do this because he couldn't own more than  
10 5 percent of the company.

11 And she went through this exhibit with us. This is  
12 the purchasing of the shares from First Independence for  
13 CodeSmart. And why is it important? It's important because  
14 Discala recruited co-conspirators and people close to him to  
15 be the people who were going to buy and control all of these  
16 shares.

17 In the left column, are the First Independence  
18 shareholders. And the other columns are the individuals and  
19 companies who bought these shares.

20 They bought these shares for 2.3 cents a share. Why  
21 is that important? That's important because, almost  
22 regardless of what price they then subsequently sell it for,  
23 they're make a profit.

24 So if you buy a thousand, or 10,000, or even  
25 hundreds of thousands of shares at 2.3 cents a share, and the

1 stock starts trading above \$3, as CodeSmart did, you're making  
2 a lot of money when you're selling those shares as Discala and  
3 this co-conspirators did.

4 This chart is also important because this is the way  
5 to control that. For CodeSmart, Discala let his  
6 co-conspirators in so that he knew who held the shares,  
7 because he can control those people. He can work with those  
8 people. And that's what he did here.

9 And here, these are the 156,250 shares that Marleen  
10 Goepel let Discala purchase in her account and trade and  
11 concealed his identity in the doing so. He gave her the money  
12 for it. She bought them. And he traded in her account.

13 Now, when Discala testified yesterday, he said, no,  
14 those weren't my shares. He said, it didn't happen that he  
15 had told Marleen Goepel to trade, but the evidence you see and  
16 you'll see here undercuts that claim.

17 This document, Marleen Goepel went through as well.  
18 On the left are the checks that you just saw in the previous  
19 exhibit that she paid, the 3600 that she paid for the shares.  
20 And on the right are the notes she took at the time saying  
21 these are AJ's shares. AJ's states above in handwriting. And  
22 there you see the 156,250 shares. And that's what she pled  
23 guilty to, to allowing him to do that and committing  
24 securities fraud.

25 Now this other chart. This chart lists the owners

SUMMATION - MR. HEIN

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1 of CodeSmart shares. And this chart is important because she  
2 explained to you that each one of the individuals and entities  
3 listed here were close to Discala. They were co-conspirators.  
4 They were partners. Some folks he knew. And as he conceded  
5 yesterday, many of them, if not all, signed lock-up/leak-out  
6 agreements.

7 And what was the purpose of that? The purpose of  
8 that is to ensure that these co-conspirators and other  
9 individuals who buy the bulk shares don't dump their stock.  
10 So he controlled them, making sure that they walked the price  
11 up without somebody coming in.

12 Now, I won't go through each name on this list, but  
13 as you see from the top, Ira Shapiro, the CEO of CodeSmart, a  
14 co-conspirator; Marc Wexler, who testified here, was a partner  
15 of AJ's. He also pled guilty to securities fraud and  
16 conspiracy and other crimes. He sold shares in CodeSmart.

17 Joseph Discala, AJ's Discala father. Fidelis  
18 Holdings and OmniView Capital. What are those? Those are  
19 companies that AJ Discala ran. They hold a lot of the shares  
20 here. And the list goes on. From Hillary Auerbach, the wife  
21 of Jeff Auerbach, an associate of AJ Discala. Lucy Ostrovsky.  
22 Marleen Goepel, the secretary.

23 There's three companies below there, JFS Investment,  
24 Draper, Hudson Park Capital, Joe Salvani's companies. Chris  
25 Herghelegui.

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1 On the right side: Garper. That's the company that  
2 Craig Josephberg, the corrupt broker with whom he worked. His  
3 wife owned that company.

4 Matthew Bell. You heard from Matthew Bell. He was  
5 also an accomplice here, a corrupt broker in Texas.

6 There's AJ Discala. Michael Morris ran Halcyon, the  
7 corrupt brokerage firm which Josephberg and Sloan, who you  
8 heard from was an accomplice, worked.

9 Let's goes on. These are all individuals who AJ  
10 Discala conspired with or was very close with and could  
11 control to ensure that they don't sell.

12 And this here, just to note, is Government  
13 Exhibit 177-22.

14 Now what else is important about this chart. I  
15 highlighted here certain rows in green in this exhibit. These  
16 are AJ Discala's shares. You see the number of shares in his  
17 name on the far right here, 68,750. That's all the shares in  
18 his name that were free-trading shares.

19 If you look at the left column, look at the line in  
20 the middle starting with Fidelis Holdings, and you work your  
21 way down. Those are the free-trading shares. The shares  
22 above that, as it states, are either bridge shares or PIPE  
23 shares that are restricted.

24 Look at the holdings. Fidelis Holdings, 238,000.  
25 OmniView, 362,000 shares. And then there's the Marleen Goepel



1 pool shares. Those are the shares that AJ Discala bought in  
2 her name and traded in her account.

3 And the final important point from this exhibit,  
4 what you saw on the bottom right. The calculation of the  
5 shares that AJ Discala had and could trade. OmniView and  
6 Fidelis. His companies. He testified yesterday OmniView was  
7 his and his alone. And AJ Discala, 253,000.

8 So OmniView and Fidelis, that sums all the  
9 restricted and free-trade shares we saw on that chart. And  
10 under AJ, 253,000. That includes the 156,000 shares for  
11 Goepel. That's why they are under his name. And that sums to  
12 910,000.

13 And 910,000 is 12 percent of the total shares of  
14 this company. Only 10 percent, himself alone. This isn't  
15 even considering Marc Wexler, Matthew Bell, all of his  
16 co-conspirators who he is working with. These are his shares  
17 and he controls them.

18 The final point here, 547 is the stock price on  
19 May 30th, 2013. When he had this calculated, that's what the  
20 value came out to, almost \$5 million worth of shares.

21 Here's CodeSmart's 10-Q filing, Government  
22 Exhibit 5.

23 Why is this important? This goes to the  
24 concealment. This is why it's so crucial for the investors.

25 AJ Discala, and you will see the same form when we

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1 get to Cubed and Kyleen Cane. They are carrying out a  
2 manipulation scheme, and they don't want people to know. They  
3 don't want the public, they don't want investors to know that  
4 they control all of this. All of these shares in the company.

5 Why? Because if an investor knows that you are  
6 controlling, you have power to control this stock, they might  
7 hesitate to invest. Because they know what you can do to the  
8 stock. You can manipulate it. You can do things outside of  
9 the normal market conditions.

10 And what do you see on this list? You see Fidelis  
11 Holdings and OmniView listed as more than 5 percent owners.  
12 But you don't see AJ Discala. And you know that he himself  
13 controlled 12 percent of the shares. But he's not listed on  
14 there, because is concealing those companies.

15 What else do you know? You know that Fidelis and  
16 OmniView, although it's very clear from every witness and  
17 himself when he testified, were his companies. He ran them.  
18 They weren't in his name. The signatories of those companies,  
19 and you saw this through Marleen Goepel's testimony, were his  
20 wife, Dounya Discala, and Lucy Ostrovsky, who worked for him.  
21 He didn't even have his names on those companies.

22 And, again, he doesn't want to put out to investors  
23 that he's running everything. Because he's carrying out a  
24 manipulative scheme. And if they're going to put this out in  
25 a filing, it needs to be right, and it's not right here. He

1 owns far more than 5 percent. And that's not disclosed.

2 Now Matthew Bell. He's a corrupt broker. He  
3 testified here. He was the first one. You heard from him for  
4 several days. A corrupt broker in Texas, who testified he  
5 pled guilty to several crimes, securities fraud conspiracy and  
6 he testified that he worked with AJ other co-conspirators for  
7 months manipulating all four of the companies at issue. And  
8 he explained that Discala would sell and he would tell Matt  
9 Bell where to buy in his client's accounts, and Matt Bell  
10 would do so, and they would walk that price up.

11 And he explained to you what the purpose of  
12 controlling the free-trading shares is. He told you AJ would  
13 know all the different people that owned all the shares. And  
14 that's what you just saw on those exhibits we went through.  
15 And he said so by having control of the shares, we would be  
16 able to manipulate the stock much easier. That way you don't  
17 have somebody that has some shares you don't know about out of  
18 the blue come in and mess up whatever you're doing that day by  
19 selling into your plan.

20 And that's at the heart of all these schemes;  
21 CodeSmart and Cubed. And we'll get to Cubed later and explain  
22 why they had even greater controlled there through Kyleen  
23 Cane. But here in CodeSmart, AJ Discala accomplished that  
24 control with his co-conspirators and other people.

25 Now, let's turn to the artificial inflation of

1 CodeSmart's stock.

2           You saw Bell mentioning manipulating the stock  
3 price. What that means is to artificially control the stock  
4 price.

5           You heard from Deb Oremland, the FINRA expert, and  
6 she explained to you what a market looks like under normal  
7 market conditions. And this is critical, and keep this in  
8 mind, this goes to the heart of had whole case.

9           Under normal market conditions, people buy stock and  
10 sell stock based on the merits of the company, on the prospect  
11 of the company; whether they had good earnings or good deals.

12

13           (Continued on next page.)

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1 MR. HEIN: And when they buy or sell stock, they  
2 don't know who's on the other end of that purchase or sale.  
3 They are just buying or selling based on what they think what  
4 the company has accomplished and what its prospects are. When  
5 you have an artificial control and inflation of the stock  
6 price as you do here, that's not what's happening. As you  
7 see, people do know who are on each side of the bid. People  
8 who were buying and selling knew who they were buying and  
9 selling into and they knew why they were doing it, because  
10 they were walking that price up to profit. They weren't doing  
11 it based on the merits of the company, they were doing it as  
12 part of a manipulation scheme.

13 Here's testimony from Matt Bell. He said he worked  
14 with a group of people to manipulate four stocks in the stock  
15 market for profit. CodeSmart, Staffing Group, StarStream and  
16 Cubed. And when asked what the specifically did you do wrong,  
17 he said I worked with a group of people to manipulate the  
18 price of stock that I personally owned at a low price to move  
19 the price of the stock upwards and sell my stock at a profit.

20 He was asked: Who you committed these crimes with,  
21 he said the defendant AJ Discala, Darren Ofsink, Ira Shapiro,  
22 Craig Josephberg, Marc Wexler and Kyleen Cane.

23 And you know who these people are he mentioned, AJ  
24 Discala of course is the defendant Discala. Darren Ofsink 10  
25 you heard about, he's the lawyer for CodeSmart. The lawyer

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1 that the company and AJ used prior to Kyleen Cane coming in  
2 for Cubed.

3 Ira Shapiro, CEO of CodeSmart who AJ worked with --  
4 Discala worked with in this conspiracy to put out false press  
5 releases, to take steps to artificially affect the price of  
6 the stock. Craig Josephberg, the corrupt broker at Halcyon.  
7 Marc Wexler, we discussed, the accomplice and, of course,  
8 Kyleen Cane. We'll get to more of Ms. Cane later.

9 Here is a chart of the stock price and trading  
10 volume, Government's Exhibit 196-3 of CodeSmart. What you'll  
11 see here is that the defendants, AJ Discala and his  
12 co-conspirators, conducted two pump and dump schemes. The  
13 first began May 13th when the stock started trading, reached a  
14 peak on July 12th, and then it fell dramatically on  
15 August 21st. And at that point they conducted another pump  
16 and dump. From August 21st to August 30 the peak there 460  
17 and then it dropped after August 30th and essentially fell for  
18 good.

19 We're going to walk through these two pump and  
20 dumps. Here's the first pump and dump. As I said, May 13th  
21 to August 21st. It is the same chart. This is the first pump  
22 and dump made bigger for you.

23 Now, as you see, and as Matt Bell explained to you  
24 in his testimony, the stock price started on May 13th at a  
25 little over \$3. On June 14th there was a stock split.

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1 Meaning that the stock price was cut in half and the shares  
2 doubled. And Matt Bell told you why they did a stock split.  
3 They did it, number one, to stay under the radar from  
4 regulators that this price shouldn't go up too high too fast.  
5 If you do a stock split, it will half that price and then you  
6 can start over again. And, number two, it enables you to pump  
7 the stock even further because you're not getting into the  
8 double digits. And that's what they did.

9           So on June 14 that stock dropped in half and picked  
10 up again around \$4 until it made its way to \$6.94. That's  
11 important too, because if you look at this chart, if they  
12 hadn't done a stock split and they had gotten to 6.94 that  
13 would have been almost \$14. So you'd see this line going from  
14 a little over \$3 to \$14 to its peak. From May 13th to  
15 July 12th they pumped the stock to about four times -- more  
16 than four times its previous level.

17           Then the stock fell on July 12th to August 21st.  
18 And Matt Bell and Jamie Sloan, another accomplice who worked  
19 with Craig Josephberg, she also pled guilty to securities  
20 fraud conspiracy, she explained to you why it fell and so did  
21 Matt Bell. Because at that point the two of them had been the  
22 ones buying while AJ Discala and Marc Wexler, other  
23 co-conspirators were selling into them. Bell was buying for  
24 his clients' accounts, Jamie Sloan and Craig Josephberg were  
25 stuffing their clients' accounts. And they both said that

1 after this price went up there and then the price started  
2 falling, Matt Bell was receiving complaints from his  
3 customers. Jamie Sloan said it wasn't as feasible to stuff  
4 customers because they were complaining because it was become  
5 obviously what was happening. And so because they couldn't  
6 buy because of this match trade scheme, the price started  
7 falling, and we'll get into that little more.

8 Now, Matt Bell explained to you what happened those  
9 first two months of CodeSmart. AJ and I would text each other  
10 on a daily basis. And you saw hundreds and hundreds of those  
11 text messages, we went through them the first few days of his  
12 testimony of this trial.

13 He told you, AJ Discala would tell me where to put  
14 the bid, i.e. where he should bid to buy CodeSmart, while AJ  
15 Discala was selling, and Bell told you AJ Discala was the  
16 quarterback so he was coordinating with Craig, Craig  
17 Josephberg, who worked with Jamie Sloan, and myself with a few  
18 other traders that I found out about and then he would tell us  
19 where to purchase the stock. Or I would tell him I have  
20 30,000 of my customers' money to purchase, and Bell would ask  
21 where do you want me to buy at, and Discala would say, buy it  
22 at this price because Discala is selling his shares. And he  
23 conceded on the stand yesterday that he sold over a million  
24 dollars worth of profit in those first few months that was  
25 part of the scheme.



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1           And here, here are those match trades. This chart  
2 shows who is buying and selling as part of this conspiracy in  
3 CodeSmart. Take a look at the red. The red are the sales of  
4 CodeSmart stock. And here are the people who were selling:  
5 AJ Discala, Fidelis, AJ Discala's company. Omni View,  
6 Discala's company. Marc Wexler, a co-conspirator. Garper,  
7 that's Josephberg's company, a co-conspirator. Matt Bell, a  
8 co-conspirator. Marleen Goepel, a secretary. Matthew Morris  
9 and Michael Morris. Michael Morris being the boss of Craig  
10 Josephberg. Chris Herghelegiu, another friend of AJ's.  
11 Arline Josephberg, the mother of Craig Josephberg. Those are  
12 the accounts. These are all the co-conspirators who are  
13 selling and making profits. And who's buying? The customers  
14 of Alamo, that's Matt Bell's advisory company, and the  
15 customers of Halcyon, that's Craig Josephberg and Sloan's.  
16 Those are the victims. Those are the victims who they are  
17 either stuffing or telling them this is a great stock to buy  
18 while they are perpetrating this pump and dump scheme.

19           Now, I expect the judge will tell you at the end of  
20 this trial, when he tells you the law, that match trades are  
21 intended to mislead investors by artificially affecting market  
22 activity, and that they are prearranged purchases and sales of  
23 securities at the same price and volume and time of execution.  
24 And that's what these are, match trades. And you can tell  
25 that because look how many are substantially similar. In the

1 red bar, the size of the bar reflects the volume, the number  
2 of shares sold in volume. And the blue bars, look how many  
3 instances on this chart they mirror one another, they are  
4 about the same because they are matching those trades.

5 Another important point the judge will tell you is  
6 that rigging prices that are intended to mislead investors by  
7 artificially affecting market activity is illegal. So even if  
8 these -- the volume on the sale, the buy side aren't precisely  
9 the same, you know based on the witnesses' testimony and the  
10 documents we've looked at and the trading data, that these are  
11 rigged trades. And by rigged I mean where the buyers and the  
12 sellers know who is buying and selling and they know what they  
13 are intended to do, to work the price up. And that's what you  
14 see here.

15 Jamie Sloan, again she worked with Craig Josephberg,  
16 she testified as an accomplice. She pled guilty to securities  
17 fraud conspiracy. And she stated: At Halcyon Cabot, their  
18 brokerage firm, because we were selling stock in small  
19 increments at ascending prices, to higher and higher prices,  
20 and because AJ was such a large shareholder and we were  
21 buying, it would ascend in the order that we entered those  
22 sales orders, so the stock price would rise based on the way  
23 we had entered the trades.

24 She was asked: Who was giving the instructions on  
25 the way that you were entering those trades? AJ Discala.

1           And that's exactly what the pump is. Prearranged,  
2 ascending prices, buying and selling, and you know you've  
3 heard from Deb Oremland supply and demand, that's what works  
4 the price up, and that's what happened here with CodeSmart.

5           And, you know, AJ Discala told you in his own words,  
6 in those text messages with Matt Bell what he was trying to do  
7 and what he did here. Let's take a look at a few of those:  
8 Gonna be our first monster, that's what he wrote to Matt Bell  
9 about CodeSmart when he first introduced him on May 10th,  
10 three days before the stock trade. Our first monster.  
11 Monster, as in we're going to make huge profits from the  
12 scheme. That's Government's Exhibit 132-2-D.

13           What else. This is our first baby together, it's  
14 gonna be a big winner. AJ Discala testified yesterday that he  
15 cared about these companies. He didn't care about these  
16 companies, he cared about his profits, what he was making out  
17 of this. That's exactly what he said. This is our first baby  
18 together. Me and Matt Bell. We're going to match trades and  
19 make a lot of money out of this. It's gonna be a big winner  
20 for us and our co-conspirators. This thing is going to fly,  
21 talking about the stock price. The stock price is going to  
22 fly. Government's Exhibit 132-2-H. Yes, sir, rocket man. To  
23 rocket the stock. We're a good team. Gonna do well for each  
24 other, that's a promise. That, ladies and gentlemen, is  
25 evidence of the conspiracy. We're a good team. Gonna do well

1 for each other. Two people agreeing to carry out this  
2 fraudulent scheme.

3 Then he said, gotta wait for split and then rocket.  
4 This is a week before the stock split. This shows exactly  
5 what Matt Bell was saying about what they were trying to do.  
6 They were going to split that price in half, be right back to  
7 \$4 and then rocket it back up.

8 Here's the stock price. Closed the first day 355,  
9 on June 13th, the day before the split, it's at 780. The next  
10 day it goes to 458, because again it split in half and then  
11 they started pumping it again. And here at the height, 694 on  
12 July 12th.

13 Now, an important point about the state of  
14 CodeSmart's business on July 12th when the stock hit \$6.94.  
15 \$6.94, based on the number of shares outstanding, so market  
16 capitalization, take the stock price, and multiply it times  
17 the shares. At this point, at that stock price, CodeSmart was  
18 worth \$86 million as a company. That wasn't based on any  
19 merit of that company. If you look at the 8-K listed right  
20 around the same time, it had \$6,000 in assets; 7,000 in  
21 revenue; and a net loss of \$103,000. Those are not the  
22 financials of an \$86 million company because it's not based on  
23 their financials, it's based on the manipulation.

24 Now here is just one day of texts, and you saw  
25 hundreds of these texts for days from Matt Bell. But one day

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1 to give you a sense of precisely how they were doing this. So  
2 Discala starts with: You ready for a big week, bro. It's the  
3 beginning of the week on Monday. Then he writes: Give him a  
4 minute after open to get all the stock. I put in 10,000 at  
5 503, then 2500 at 504, 506, 507, 508, 509. And Matt Bell  
6 testified why you do that, you put those bids in you're  
7 setting that floor. Even if they don't get hit, even if  
8 someone doesn't sell into it, you're ensuring the price  
9 doesn't fall below those. It's going up.

10 Bell writes back: Doing it. Discala says: Go.  
11 Bell says: Up to 507. Discala says: 509 if you want. Just  
12 sent 15,000 shares at 509. Nice. 511. Fill my 511. I got  
13 6300 shares to fill. Full. Fill. I'll put out now. Gimme  
14 three. It's done. Let's go next level. I still have shares  
15 to buy. It's in. Go. Limit.

16 You saw hundreds and hundreds of text messages doing  
17 that every day. Just working the price up. Filling each  
18 other's sales that Discala was putting in and the buys Matt  
19 Bell was doing with his clients.

20 If you look at this, we mentioned the price that  
21 they're talking about 503, 504, 509 and going up to 509, 511.  
22 Take a look at, the stock price closed the Friday before at  
23 502. And it's exactly what you saw, they're working up 503,  
24 508, 509. And where it does it end up that day at 526 with  
25 157,000 shares of volume. You see there in one day what they

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1 did on a daily basis, work the price up and you see where it  
2 got them.

3 Now, we mentioned misleading press releases and SEC  
4 filings. Discala and his co-conspirators -- and, again, we'll  
5 discuss this when we get to Cubed as well of the importance of  
6 news and press releases. But with respect to CodeSmart, he  
7 and Ira Shapiro and others ensured that there were constant  
8 press releases out. And Matt Bell told you why. Because you  
9 put press releases out, put good SEC filings out -- and Matt  
10 Bell didn't care whether they were accurate or not, he didn't  
11 even know, but you put those out you can justify to your  
12 investors why you're buying the stock. Why it's a good stock.  
13 So that's why news was so important and they discussed often  
14 in the text messages.

15 Here is a few examples. Right at the beginning on  
16 May 10, before they even started, Discala wrote: Easy. Wait  
17 'til you see news, every Tuesday, Wednesday. It's part of the  
18 scheme. The news will come and allow you to justify why  
19 you're buying. The same thing with Josephberg. If clients  
20 called to complain that he's stuffing them, he says to them  
21 Sloan discussed the news press release as well. He says, this  
22 is why I'm buying. Good news out of here. Discala here on  
23 May 23rd, more news. And then Discala writes: I just like  
24 that news is constant. Because news is so important to drive  
25 this.

1           And here's, Discala mentioning he was testifying  
2 yesterday that he sold but he didn't tell Bell where to buy.  
3 These text messages are full of Discala telling Bell when to  
4 buy and where to buy and how much. And here's just an  
5 example. He writes to Discala, Bell writes, 477 to 478.  
6 Discala writes back 478. Then Discala writes: Nice, buy 500  
7 at market. Want to go back to 81. He wants to get to 481.  
8 Of course he was telling him when to buy as part of the  
9 scheme.

10           Now, Bell told us -- we asked him, what was your  
11 understanding for why Discala liked the news constant? Bell  
12 told you because the more news that comes out, Yahoo News or  
13 major newswires, the more legitimacy the stock has.

14           Why is that? Because we're buying a lot of stock  
15 for a lot of different people and we can shore up the reason  
16 that we're buying the stock with these news stories.

17           Let's look at some of these news stories. The  
18 may 28th, 2013 press release from CodeSmart. Government's  
19 Exhibit 172-41. You saw this about the Binghamton. It stated  
20 that CodeSmart is a strategic partner and has an exclusive  
21 strategic partnership with Binghamton. Then you heard from a  
22 representative from Binghamton, Ryan Yarosh. What did he tell  
23 you? He told you that this was false. This wasn't true.  
24 They didn't have an exclusive relationship with Binghamton.  
25 Well, why are they putting this out? They're putting this out

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1 because it's good news for the public that they can use to  
2 further their scheme.

3 Then here on June 4th. Discala -- news out now,  
4 Bell writes. Discala says: I'm sure. And bell writes:  
5 Ramapo news out. Discala testified yesterday he had nothing  
6 to do with the news. He didn't know it was coming. Discala  
7 new exactly what was happening in the news. He said in the  
8 beginning it's coming every Tuesday, Wednesday. He knew it  
9 was coming because he was working with Shapiro on this and he  
10 had inside information about when it was coming. And he knew  
11 about this Ramapo College news press release coming out. Here  
12 it is on June 4th. This one also states, CodeSmart had an  
13 exclusive strategic partnership with Ramapo College.  
14 Government's Exhibit 172-49.

15 What did Rosa Mulryan tell you when she testified,  
16 the representative from Ramapo? This was wrong. There was no  
17 exclusive partnership on June 4th. Again, they were putting  
18 this out because they wanted to push the price regardless of  
19 whether it was true, and this wasn't true.

20 And here on June 4th, 2013, the same day, Ira  
21 Shapiro writes an apology email to Rosa Mulryan from Ramapo.  
22 Stating, my apologies on behalf of CodeSmart. Admitting that  
23 that news release wasn't true.

24 I want to note for you, you see the top right it  
25 says Overt Act A. I mentioned overt acts in the beginning.



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1 This is Government's Exhibit 181-1. As I said, overt acts are  
2 acts taken to further some objective of the conspiracy and  
3 they are necessary for the securities fraud charge. Now I'll  
4 go through them, we've charged 13 of them, you just need to  
5 find that at least one of them furthered this conspiracy.

6 And here, Overt Act A, Ira Shapiro is writing this  
7 email of apology, he doesn't want Ramapo College to suddenly  
8 make a big deal out this, to bring this public, complain, do  
9 whatever they might do to question CodeSmart's integrity as to  
10 what they're putting out when they're putting out false press  
11 releases. He's furthering their conspiracy.

12 Now I mentioned earlier the price started falling  
13 after July 12th of CodeSmart. As I mentioned, you heard from  
14 Bell and Sloan that it was falling because they weren't  
15 filling that buy side anymore; they couldn't. Bell's clients  
16 were complaining. You saw text messages about it, he  
17 explained it, they were complaining the stock price is  
18 falling. And Sloan said they couldn't stuff people to that  
19 degree because the stock price was falling.

20 And so Bell's clients started to complain so much  
21 and threatening action that Bell and Discala got together and  
22 they said what are we going to do about this. What they did  
23 was provide hundreds of thousands of CodeSmart shares at 14  
24 cents a share -- or 10 cents a share to keep these clients of  
25 his quiet so they don't go complaining, they don't go to

1 regulators, they don't raise a stink. It's essentially bribe  
2 money saying, look, the price is still up in the two, 3-dollar  
3 range, 14 cents will give you shares and that will make up for  
4 it.

5           You see that here. Bell 272. He was asked: What  
6 was the purpose of providing 750,000 shares to the customers  
7 at 14 cents? He said, they were upset. It was like hush  
8 money, but it was hush shares, you know. If I could sit down  
9 with the customer and say, look, we'll get you 50,000 shares  
10 at 14 cents, you'll be able to sell at some point. And that's  
11 what they were doing in the August time frame when the stock  
12 was coming down from its height of 6.94.

13           Here's Overt Act B from Exhibit 178-40. And this is  
14 a stock purchase agreement. This is what the -- the steps  
15 they took with the client. This was an individual named Jim  
16 Reynolds. Discala signed it. This is a client of Bell's and  
17 he is selling at 14 cents a share tens of thousands of shares  
18 of CodeSmart as hush money. As I mentioned, with overt acts  
19 this is another overt act, another step to further the  
20 conspiracy and the step here is to hush these people up so  
21 they can keep their scheme going.

22           Pump and dump two. As I mentioned, the stock went  
23 up 694 on July 12th, it fell to 219 on August 21st. And at  
24 that point Discala and his co-conspirators began to purchase  
25 stock so that they could recover. Now why did they do this?

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1 They did it so that Bell's clients and Josephberg and Sloan's  
2 clients didn't run to the authorities, and they did it so they  
3 could manipulate it further, make more money off it.

4 Here is that second pump. You see the bottom there,  
5 219 August 21st, August 30th it more than doubled to \$4.60 and  
6 then it cratered again in September. And here Government's  
7 Exhibit 196-4, these are the stock prices I just described.  
8 This is the puff portion from 219 to \$4.60.

9 Now how did they do this? Government's  
10 Exhibit 196-7. This chart shows you the match trades on  
11 August 21st. They worked the price back up. Discala is  
12 selling through Marleen Goepel's account CodeSmart shares and  
13 Marc Wexler is selling through his account CodeSmart shares.  
14 Who is buying? Michael Morris, the head of Halcyon, as part  
15 of this conspiracy. Ron Heinerman, he's the compliance to  
16 Halcyon. Matthew Bell, who you heard from. Garper, that's  
17 Craig Josephberg, and then Discala's accounts. This is match  
18 trading. On that day, look how many shares trade hands  
19 between people who know each other. You're selling in to the  
20 other individuals who know they're buying your shares to try  
21 to work this price up because it's supply and demand. You get  
22 the bids higher and higher, you work it up, sell right into  
23 it.

24 How else did they accomplish this, how did they get  
25 the price to double from August 21st to August 30, again more

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1 press releases, more filings. Bell asked Discala, letters?  
2 Discala says -- this August 26, Government Exhibit 132-2-DD.  
3 Discala says, from CEO, Ira Shapiro on CodeSmart. He knows  
4 about this press release before it's even come out. He knows  
5 about it because he's conspiring with Ira Shapiro to get it  
6 out to push this price up. Discala says to Bell: Watch for  
7 letter, a letter from Ira Shapiro, and then buy, buy. Letter  
8 tomorrow, Discala says now buy. Any minute. Cool. It will  
9 be very cool. Then Bell writes read now -- excuse me.  
10 Discala writes: Read now. Please help me build some  
11 momentum. Momentum in the stock. This has come out now, this  
12 letter from Ira Shapiro saying how great the company's  
13 prospects are not withstanding the fact that the price has  
14 just plummeted over the last month, and they want to buy on  
15 this news.

16 Here is the press release. The second page states,  
17 from Ira Shapiro -- keep in mind the price was at 694 in July,  
18 it's now almost down to \$2. He's saying, if we continue on  
19 the track we're on, I believe it will achieve our revenue and  
20 profit goals that were previously disclosed. We believe we  
21 have access to a large market of potential students which we  
22 estimate to be over 40 million people. This is Government  
23 Exhibit 172-8. That's a misleading statement. Their stock  
24 prices crater, their company hasn't achieved anything, if you  
25 look at their financials, and he's saying now to the public

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1 we're going to take off here to build the price back up as  
2 part of their pump.

3 What happens the next day? As we explained, UTC  
4 time in the summer it's five hours ahead of East Coast time,  
5 so this is about 8:30 in the morning before the market opens.  
6 What does Discala write to Bell? Ira buying 25,000 today and  
7 announcing. Discala told you yesterday he didn't know  
8 anything about these press releases, they were all separate  
9 from him, he didn't influence them. He knows before the  
10 market opens that Ira Shapiro is putting out a press release  
11 stating his confidence in the company.

12 Here is that press release, August 27, 2013,  
13 Government Exhibit 177-10, the day after the last one because  
14 this is where they're pumping the stock. He says: I continue  
15 to believe that CodeSmart is the premiere ITEN in education.  
16 This stock purchase of mine, which you can see in the first  
17 paragraph, is an \$80,000 stock purchase on behalf of Ira  
18 Shapiro. This stock purchase is symbolic of my confidence in  
19 the company and its mission. It's not symbolic of its  
20 confidence. The company has tanked. The company hasn't  
21 gotten anywhere. This is misleading. This is false. This is  
22 to drive buying in the stock. They put this out in an 8-K the  
23 same day. This is a false SEC filing. Stating that he's  
24 buying the shares because of his confidence in the company.

25 Why else is it false? By the way, it's another

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1 overt act that we'll go through furthering the conspiracy.  
2 Why is it also false? Because what happens. That money, the  
3 \$80,000 Ira Shapiro spent because it was symbolic of his  
4 confidence as CEO of the company. Who provided that money?  
5 Fidelis Holdings, AJ Discala's company. He transferred over  
6 that money and you heard this from Marleen Goepel. She told  
7 you about that day where she said AJ Discala told me to  
8 transfer money to Ira Shapiro right after this press release,  
9 right after Ira Shapiro says he bought this money for himself.  
10 And here Shapiro received it. 81,278. That's the transfer  
11 from AJ Discala to Ira Shapiro.

12 So what happened here? I submit to you what  
13 happened was Discala said we need to pump this stock back up.  
14 He said, Ira Shapiro, you're putting out a press release  
15 saying you have confidence in this company as CEO and you are  
16 buying \$80,000 worth of stock and that's really going to get  
17 the stock to climb. Bell and Josephberg and others can go to  
18 their clients and say, look, at what the CEO is doing, you  
19 have to buy in this thing, I'm going to buy it for you. But  
20 Ira Shapiro doesn't even have that money, he's not paying for  
21 it. AJ Discala is funding it. He's paying him from Fidelis,  
22 from his company, to Ira Shapiro.

23 So here is this pump and dump two. As I said, it  
24 started at 219. What did you see those press release  
25 August 26th and August 27th is when you saw those. And look

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1 at the volume of trading in those nine days. 382,000,  
2 226,000, 176,000, and on August 26th and 27th the stock price  
3 continued to climb until 460 on August 30th. Then what  
4 happened when they couldn't keep this manipulation together,  
5 it plummeted to 215.

6 And Bell told you why they couldn't keep this  
7 manipulation together because it relies on both sides working  
8 together. It relies on the selling and the buying and if  
9 there's any problems that come in there, if there's people  
10 selling out of turn, which Bell told you he started doing in  
11 late June because he wanted to get his money too, if there's  
12 that happening, if you can't buy in your clients' accounts  
13 because they're all complaining, what happens to that stock  
14 price? It plummets. That's what happened after July, that's  
15 what happened here after August 30th, because this is an  
16 artificial controlling and rigging of a company stock price  
17 and it works if the co-conspirators are all working together  
18 but it falls apart when issues come up, which they inevitably  
19 do.

20 Here on Government's Exhibit 196-8 this is that  
21 period you saw here on the left side of the chart. Again,  
22 rigged prices, match trades. You can see how they mirror each  
23 other on those first few days. You can see how they had some  
24 success working that price, continue to work that price to  
25 August 30th of 460. Take a look at the right side, that's

1 where the price is falling again because they're not matching  
2 their trades. You even have some days where both accounts,  
3 the sellers again being Discala, Wexler, and the buyers again  
4 being Alamo customers of Matt Bell's, Halcyon customers of  
5 Craig Josephberg, some days in September when the price is  
6 falling they're both on the buying end because they're  
7 desperately trying to get the price up to buy but it's falling  
8 deeper because they're not able to match like they have  
9 throughout the scheme.

10 Jamie Sloan, what did she explain? She explained a  
11 very important point about these schemes and it's the same  
12 point that applies to Cubed, when we get there. She was  
13 asked: So I wanted to ask, is it a good thing for investors  
14 if you keep a stock price artificially high and they don't  
15 know about it? And she said, no. Why not? Because if the  
16 stock price is artificially high, if the price is high based  
17 on trading activity and not a merit of the company, then it  
18 will crash if it's not based on the actual company.

19 She asked, what happened to ITEN. After the  
20 manipulation ended, it plummeted.

21 These manipulation schemes for CodeSmart and later  
22 Cubed, are not to protect the company, they are to make huge  
23 profits at the investors' expense. And once those  
24 manipulators, once the defendants have made those profits, if  
25 they don't keep their manipulation going the stock price



1   plummets and everyday investors who are misled into investing,  
2   they lose their money. But the defendants, the fraudsters  
3   have already made huge profits on those shares they got for  
4   nothing and they sold off to victims.

5           Profits at investors' expense. That was the last  
6   point I initially introduced to you when I talked about  
7   obtaining control and the importance of it, artificially  
8   inflating the price and the fact victims then lost money as a  
9   result.

10           Co-conspirators in CodeSmart made huge profits.  
11   Government Exhibit 195-1 and 195-2. Discala made \$2.2 million  
12   off this manipulation of CodeSmart. Goepel, and that's  
13   Discala, Goepel's account because he used it made 600,000. In  
14   total \$2.8 million he made off of this manipulation in  
15   CodeSmart.

16           Marc Wexler, who you heard from, he made  
17   \$2.2 million because he also got his shares cheap and he also  
18   was selling with Discala in those early periods.

19           Matt Bell made about \$560,000 selling his own stock  
20   in to this manipulation scheme for a profit.

21           Craig Josephberg, the Garper account. He made  
22   almost \$700,000. And that came all at the expense of victims,  
23   of victim investors who were told by the defendant and their  
24   co-conspirators that this was a good stock to invest in. It  
25   had a strong product and strong demand. They lost a lot of

1 money.

2 Alamo customers, Matt Bell's customers. You heard  
3 about all their complaints, all the money they were losing  
4 when Matt Bell had been putting them in the stock and the  
5 stock plummeted.

6 Halcyon customers, Craig Josephberg's customers,  
7 Sloan's customers, they lost a ton of money because of what  
8 Discala and his co-conspirators were doing.

9 And you heard from a few individuals. Stanley  
10 Craig, you remember him up here, the first victim witness you  
11 heard from, about 77 years old, Memphis, Tennessee. He told  
12 you that Craig Josephberg kept calling him, cold calling him,  
13 telling him to invest in this company, CodeSmart. And  
14 eventually he gave him a few thousand dollars to invest, and  
15 he lost that money.

16 Edward Custer. He told you as well, Craig  
17 Josephberg kept calling him, calling him, eventually gave him  
18 a few thousand dollars to invest and what did he find out one  
19 day that Craig Josephberg had stuffed this account into  
20 CodeSmart. He didn't want to invest in CodeSmart, he never  
21 brought it up with him, but he stuffed his account and he lost  
22 that money.

23 Stephanie Conti, you heard from her, from New City,  
24 New York. Testified that Ira Shapiro convincing her and her  
25 husband that CodeSmart was going to take off, they should

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1 invest their savings in it. She put \$28,000 in it and lost  
2 all of it.

3 Here is Stanley Craig. Mr. Craig, would it have  
4 been important to your investment decision to know that  
5 individuals were artificially inflating the price of  
6 CodeSmart? Yes, sir.

7 Would you have invested if you had known? No, sir.  
8 You don't step into a boat when you see a hole in the bottom  
9 of it.

10 What kind of financial impact did losing \$7,000 have  
11 on you? I lost 7,000. I saved that. You know, money doesn't  
12 grow on trees. That's Craig's testimony at 967, 68.

13 And here is Stephanie Conti. She was asked: You  
14 saw from the documents where you stated you invested 26,000 --  
15 28,600 in CodeSmart. How much of that money did you lose?  
16 Everything.

17 She was asked would she have invested had she known  
18 about this artificial inflation? She said no.

19 Why wouldn't you have invested? This was my kids'  
20 future. My oldest son right now has college debt, my middle  
21 son has college debt, my daughter, who is not yet in school,  
22 will have college debt.

23 What kind of financial impact did losing the 28,600  
24 have on you? It meant everything. It was money that, you  
25 know, that I worked since I was 14 and when I was able to

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1 participate in the company Vanguard or 401(k) I saved. It was  
2 going towards my children and it was basically for nothing.

3 This was all AJ Discala and his co-conspirators'  
4 artificial manipulation of CodeSmart, misleading investors,  
5 these people lost money. Stephanie Conti lost money she would  
6 have used for her childrens' education. That's Conti at 1932,  
7 33.

8 Now, Discala's manipulation of shares of Staffing  
9 Group and StarStream. As you saw, Staffing Group and  
10 StarStream are not charged separately with a substantive count  
11 like CodeSmart and Cubed are. Meaning that Count Three and  
12 Four are securities fraud counts of CodeSmart and Cubed,  
13 Staffing Group and StarStream are charged on some of the wire  
14 counts and on the conspiracy counts. We didn't spend as much  
15 time on it, but the evidence you did see showed you that  
16 Discala and his co-conspirators did the same thing to Staffing  
17 Group and StarStream.

18 Government's Exhibit 196-15. This is a stock price  
19 and trading volume chart for StarStream. Take a look at this  
20 brief period here where Discala was getting in with his  
21 co-conspirators to manipulate the stock. On May 7th, 2014,  
22 the closing price was at 30 cents. On May 8th -- excuse me,  
23 10 cents. On May 8th it was at 15 cents. Then on May 13th,  
24 five days later, it hit an intraday high of a dollar five and  
25 closed at 80 cents. So from May 7th to May 13th it went from

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1 10 cents to 80 cents, eight fold increase and that wasn't as a  
2 result of a normal market conditions of people buying in the  
3 stock. It was the result of Discala's manipulation of the  
4 stock. And you see that here in these calls.

5 Now, before we play this call, this is Count Seven.  
6 This is one of the wire fraud calls. As I said to you, each  
7 wire fraud call, I expect the judge to tell you, that in  
8 furtherance of the fraudulent scheme is itself a crime. So  
9 it's itself a count. When you listen to this call you'll see  
10 this call was in furtherance of the conspiracy to manipulate  
11 StarStream. Check the date out, May 9th call. And I just  
12 went through with you between May 7th and May 13th, 2014, the  
13 stock price grew eight fold and this is right in the middle of  
14 that manipulation.

15 (Audio recording played.)

16 This call tells you exactly what Discala wanted to  
17 do and did do with StarStream, that they're really going to  
18 steal this stock. What does he say? He wants to buy it all  
19 up right now and then he says and then we're going to take it  
20 to a dollar. They're going to buy it all up cheap as they are  
21 and then they're going to work it up to a dollar. That's the  
22 conspiracy here, to work this price up. He doesn't care about  
23 this company. Listen to how he talks about -- listen how he  
24 speaks to Victor Azrak, who you heard from, another  
25 accomplice, another individual who pled guilty, who told you

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1 about his conspiracy with Discala and Kyleen Cane. And this  
2 is what he wants to do.

3 Hear another call on June 12th, 2014. This is Count  
4 Eight, a wire fraud call. And I should mention, for the  
5 record, Government Exhibit 198-74 is the exhibit in Count  
6 Seven, that's the wire call. Here's another StarStream  
7 related count.

8 (Audio recording played.)

9 So Jon Arlo, Jon Arlo worked for Darren Goodrich at  
10 BMAC Securities. Darren Goodrich was another corrupt broker.  
11 You saw in the text messages with Bell talking about Darren  
12 Goodrich of BMAC and helping them as a market maker close the  
13 spread and tell them when to trade. And then you saw him  
14 feature prominently in the Cubed conspiracy, Darren Goodrich.  
15 And here Discala is talking to Jon Arlo, who works with him,  
16 about SSET. And when he says, Arlo says, 43 by 50. Discala  
17 says, all right, go 44, it's only a thousand.

18 So when they say 43 by 50, and you heard this --  
19 Jamie Sloan probably explained this in the most detail, that's  
20 the spread. What the spread means is the spread between a bid  
21 and an ask on the screen. You saw that screen. And what  
22 Jamie Sloan told you is it always looks best when that spread  
23 is as small as possible. Because if you have a real  
24 legitimate company, a company that's trading a lot in the  
25 stock market, an Amazon, et cetera, that spread is going to be

1 almost nothing, maybe a penny because it's constantly being  
2 traded, sold and bought and those are going to be close to  
3 each other. As you'll see from some of the calls here, all  
4 these stocks that Discala has manipulated, there's a huge  
5 spread. Here 43 cents on the bid and 50 cents on the ask.  
6 What's that telling you? That there's not much volume, people  
7 aren't really trading. The only ones trading are these  
8 conspirators, Discala and his team. And Discala, as he  
9 said -- you'll see it on calls, he cares about optics. He  
10 cares about getting that spread tighter so that it looks to  
11 investors like this is a company that's really trading.  
12 People are really buying and selling and it's liquid and it's  
13 worth investing in, but that's all a farce. He's artificially  
14 rigging that.

15 And so you'll see calls to individuals like BMAC,  
16 who is a market maker. And by market maker, BMAC, Glendale  
17 and VFIN, you've seen. Market makers part of their job is to  
18 buy and sell to keep a stock going. So they have the power to  
19 put in bids and asks and look at that screen to keep that  
20 spread tighter. That's why he's dealing with them, that's why  
21 he's dealing with Darren Goodrich and Arlo telling them to  
22 close that spread, bid this, ask that. This is all artificial  
23 rigging prices. This is not normal market conditions. And  
24 that's what he's doing here 43 by 50 and Discala says, all  
25 right, go 44. Neither of these individuals is trading in the

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1 stock in any way based on its merit, they're trading on it to  
2 manipulate it. This is Count Eight, Government  
3 Exhibit 198-52.

4 Now Count Nine.

5 (Audio recording played.)

6 You see the same thing going on here as you did in  
7 the previous call. This one is Craig Josephberg, the corrupt  
8 broker at Halcyon, they're talking about StarStream. They're  
9 talking about what the spread is, talking about how to close  
10 it. You saw them say here, we own it all. They're  
11 controlling this price, they're buying it up and they're  
12 walking it up. And this, like the other two counts you saw of  
13 wire fraud, are in furtherance of a fraudulent scheme to  
14 manipulate StarStream.

15 Government's Exhibit 196-17. This is the Staffing  
16 Group. Here, again, it is a trading volume and stock price  
17 chart and you see Discala's manipulation between May 7th and  
18 May 30th. The stock price is at 25 cents, he gets it to 31  
19 and then by May 30th to 42 cents.

20 Here's is the call, Government Exhibit 198-12,  
21 showing that.

22 (Audio recording played.)

23 (Continued on the next page.)

24

25



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1 MR. HEIN: So what you do see in this call, this is  
2 between Victor Azrak and Discala. They are talking about how  
3 to manipulate TSGL, the Staffing Group, and also mentioned  
4 SSET, which is Star Stream, the manipulation of that as well.  
5 You see the mentions of BFIN, BMAC, those are the market  
6 makers. BMAC being the place where Goodrich works.

7 What Discala is trying to get Azrak to do is to set  
8 a floor, to build this price off, that's why he says VFIN. In  
9 VFIN put in 20,000, not held, 20 cents, good till cancel; in  
10 other words, it's going to stay there until it cancels. Once  
11 he sets the floor he doesn't want the price dropping. So he  
12 says high 20,000, put that bid in, let's keep that floor so we  
13 can manipulate the stock and ensure that it doesn't fall. All  
14 artificial manipulation.

15 He asked about the spread 22 81 by 30. So 22 cents  
16 by 31. He wants to close that spread and wants to set a floor  
17 so it doesn't fall below that. That right there is the an  
18 example of what they did to manipulate the Staffing Group.

19 You also saw dozens of messages, text messages,  
20 between Bell and Discala talking about manipulation Star  
21 Stream and the Staffing Group, where to bid, what they were  
22 trying to do. That's evidence of the conspiracy to manipulate  
23 the Staffing Group.

24 Let's turn to Cubed. Again, the Cubed scheme  
25 involved both defendants AJ Discala and Kyleen Cane. I'm

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1 going to spend the remainder of today on Cubed and what did it  
2 involve.

3 Here Cane obtained and concealed and controlled over  
4 all Cubed free trading shares. We talked about Discala  
5 filling that role for Code Smart. Here Discala was so  
6 excited. We saw the text messages, you've seen the calls to  
7 bringing Kyleen Cane into this conspiracy. Ofsink was no  
8 longer the lawyer, it's Kyleen Cane. He told Bell, I have  
9 amazing new counsel, I'm so excited about it. He's not  
10 excited about bringing in a new lawyer because she's good at  
11 SEC filings. He's excited about Kyleen Cane because of the  
12 escrow account that she has set up, the ability to control all  
13 of the shares, one person.

14 You saw what happened with Code Smart. Code Smart  
15 fell apart. You've seen -- we've discussed it. We've seen  
16 why. But a big reason why it fell apart, you heard this from  
17 many witnesses, Bell, Sloan and others. A big reason why it  
18 fell apart is because Discala didn't have full control of all  
19 of the shares, right. He had Fidelis and Omni View and his  
20 and Goepel for himself. Then he had people he knew that had  
21 the lock out/leak out agreements. Bell told you he broke out  
22 the lock out/leak out agreement, he started selling it. He's  
23 looking at it and saying, Discala is making all this money  
24 while he's selling and I'm buying for my clients, I don't want  
25 to miss out, I'm going to start selling. So people broke into

1 that and they messed up the scheme, because they didn't have  
2 full control.

3 Discala was so excited about Cane joining the  
4 scheme. She had an upgrade, something special, an account  
5 where she's the only one who holds all of the shares. She can  
6 control them. And she can sell them off at her pace. That  
7 will ensure that you have a gradual steady pump and dump and  
8 make the most out of the scheme. We'll go into that detail.

9 She takes control, and just like Discala did in Code  
10 Smart, she concealed that control. Why, because she didn't  
11 want to get caught. She knew she was running a fraudulent  
12 scheme. Discala, Cane and others conspired to artificially  
13 inflate the price. She gained the control then they inflated  
14 the price together. Finally, just like Code Smart, victims  
15 lost a lot of money.

16 Let's talk about Cane's control of Cubed free  
17 trading shares. The first important piece of this control is  
18 Cane Clark, Kyleen Cane's law firm, formation of Northwest  
19 Resources. You heard a lot about Northwest Resources. This  
20 was the shell company used to bring Cubed to make it public.  
21 First Independent was used for Code Smart, then Northwest  
22 Resources was used here.

23 Who provided that shell? Kyleen Cane provided that  
24 shell. Why is it so important to the scheme? Because all of  
25 those free trading shares in Northwest Resources were held by

1 fake shareholders; in other words, Kyleen Cane held them all.  
2 Those same fake shareholders, i.e., people who didn't get  
3 their certificates, who didn't actually own the shares but  
4 who's name were on there, were the same fake shareholders in  
5 Cubed, that's what enabled her to carry out her scheme through  
6 the escrow account.

7           How do you know all this? Because the witnesses and  
8 the documents -- the witnesses you heard from and the  
9 documents you've seen. Who did you hear from? Wesley Smith,  
10 you remember Wesley Smith. He came here from, he actually  
11 lives in North Carolina now but lived in Las Vegas back in  
12 2011, 2012. He told you that Joe Laxague, one of the four  
13 lawyers at Cane's law firm, he dealt with him on making these  
14 shell companies, creating these fake mining companies. He  
15 told you he had done another one with Joe Laxague called  
16 Remington, another fake mining company shell company, where he  
17 had recruited Wesley Smith to help set it up to help get  
18 shareholders. He told Joe Laxague said, I'll pay you money if  
19 you can help me form this company called Northwest Resources a  
20 fake mining company, no business, get it on the books, we'll  
21 sell it later as a shell and I'll pay you \$10,000.

22           Wesley Smith told you what was he assigned to do  
23 with that money, find a fake CEO of Northwest Resources and  
24 find fake shareholders, i.e., people who are going to sign  
25 subscription agreements and say, yeah, I own some shares in

1 Northwest Resources then have nothing more to do with that  
2 company. Hand those over, Kyleen Cane has them, and they are  
3 the shareholders who become the Cubed shareholders that she  
4 can control to leak out shares in the market.

5 Wesley Smith told you that he found some  
6 shareholders, family members, friends. And then he told you  
7 that he went to his barber at the barber shop in Las Vegas. A  
8 guy named Gary Gray Scoggins. And that barber signed up fake  
9 shareholders himself.

10 Wesley Smith told you he was paid \$10,000 once the  
11 shell company Northwest Resources was sold for his help to Joe  
12 Laxague on this.

13 You heard from Taylor Edgerton, the fake CEO that  
14 Wesley Smith found, childhood friends. He found Taylor  
15 Edgerton and said, I did this before with Joe Laxague, one of  
16 the four lawyers the Cane Clark, Kyleen Cane's law firm. He  
17 said he can get paid \$20,000 for being a CEO once they sell  
18 it, all you have to do is fill out paperwork, Joe Laxague will  
19 write it up. And Edgerton agreed.

20 He told you got \$20,000 in cash to start the  
21 company. He went to the bank and put it in the Northwest  
22 Resources and they set it up. Then he told you that he was  
23 tasked with finding some fake shareholders. He and Wesley  
24 Smith went out and found those shareholders. Then once  
25 Northwest Resources was sold he got paid \$20,000 for doing all

1 of this.

2 Again, why did we go through and why did we put the  
3 witnesses up, and why are we explaining it now, because it's a  
4 critical piece of the fraud off the concealment that Kyleen  
5 Cane led here in order to get this escrow to make it that she  
6 controlled all those shares. These fake shareholders signed  
7 up, didn't know anything about it any more, leaked them out as  
8 Cubed shares to make the Cubed scheme work.

9 Northwest Resources was set up, here is Government's  
10 Exhibit 196-20. 8 million restricted shares, shares you  
11 couldn't trade on the market at that point. Taylor Edgerton,  
12 CEO, he got the shares. When I say he got the shares, he  
13 signed up for them. He testified he never got a stock  
14 certificate. They weren't his shares, but he told he had  
15 8 million shares. Then the 3 million free trading shares,  
16 from thirty shareholders. The individuals Taylor Edgerton and  
17 Wesley Smith and found, the fake shareholders to make up the  
18 3 million.

19 Here is a critical piece of evidence Government's  
20 Exhibit 185-8. What does that state up here in paragraph  
21 five? This is a letter from Cane Clark's law firm that Joe  
22 Laxague drafted regarding FINRA. FINRA is the regulatory body  
23 for brokers. They asked questions about the company, who are  
24 the shareholders, when they are getting it registered. They  
25 sent this to a guy David Lopez, Spartan Securities Group, to

1 answer some of these questions, a broker they were working  
2 with.

3 It says, our initial public offering was closed  
4 April 2011, we have a total of 3 million shares of common  
5 stock. Those are the 3 million free trading shares of  
6 Northwest Resources. They were sold at .006 per share. Here  
7 they say in the letter, are the 30 Northwest Resources free  
8 trading shareholders.

9 What do you know? You know that none of those  
10 people got shares. None of those people were actually  
11 shareholders, the free trading shareholders of Northwest  
12 Resources or of Cubed. I'll walk you through why you know  
13 that.

14 These individuals highlighted in yellow. Wesley  
15 Smith testified these are the individuals he found to be fake  
16 shareholders. What did he do? He went to them, he said here,  
17 you're going to have \$40, \$50, \$100 to sign this paperwork.  
18 Where did he get that money? Joe Laxague from Cane Clark gave  
19 him that money. He said, I'm going to pay you this money,  
20 you're going to sign these subscription agreements. You saw  
21 those. I'm buying 100,000 shares of .006. Each of those  
22 people filled out that paperwork. And then Wesley Smith  
23 provided a Money Gram for \$600, that they didn't pay, saying  
24 here's the payment for the shares. Fill this out, take your  
25 \$40, \$50 and you'll be on your way.

1 Wesley Smith explained who all these people are.  
2 Most of them are family members, and some of them are friends.  
3 A couple of them he said he couldn't remember whether Bobby  
4 Watkins, Craig Means, whether she or his barber, Gray  
5 Scoggins, signed those people up.

6 In the green, these are the people who Taylor  
7 Edgerton found, co-workers Terrence Miglioizzi, Ramon Molina.  
8 He told you the same thing, gave them some cash, sign this  
9 paperwork, you don't have to do anything else just free money  
10 to you, you don't have to pay the \$600 for the shares just  
11 sign up that you're a shareholder and we'll pass it along. I  
12 submit to you that's what happened with all of the rest of  
13 these people, but that Gray Scoggins, the barber found them.

14 Who do I put in red Marche Godffrey. You heard from  
15 Marche Godffrey. You remember, he came from Las Vegas, wore  
16 sun glasses up here until he took them off when he testified.  
17 He told you exactly what happened.

18 He said his barber in Las Vegas, who he knew as Fat  
19 Mac. And what did you see when Special Agent Voulgaris  
20 testified, put in a photo, a driver's license ID, of Gary  
21 Scoggins and that photo matched exactly who Marche Godffrey  
22 identified as Fat Mac, the barber. That barber, Gary  
23 Scoggins, who you see here bottom left, he was one of the  
24 shareholders. Now Gary Scoggins in the barber shop said, hey,  
25 Marche, I'll give you \$40 cash just fill out this paperwork,



1 then you're done. Says you're a Northwest Resources  
2 shareholder and own 100,000 shares. Take this paperwork, fill  
3 a few things out, here is a Money Gram for 600, you don't need  
4 to pay that, it's not yours, and you can go about your day.  
5 That's exactly what he testified. Did that happen? He didn't  
6 hear another thing from Northwest Resources, never got a stock  
7 certificate. Just like Wesley Smith testified.

8 And none of those people in yellow he signed up got  
9 stock certificates, just like Taylor Edgerton said, I  
10 understood those two people didn't get stock certificates.  
11 Look how many people are testifying that they never got stock  
12 certificates. And Marche Godffrey told you he never got one.

13 What does that mean? He never owned those shares,  
14 those weren't his shares. Those are the shareholders that  
15 started Northwest Resources and became the Cubed shareholders,  
16 sitting in the escrow account of Kyleen Cane to control.

17 Here is 185-25, an invoice from Cane Clark, Kyleen  
18 Cane's four-person law firm that she ran, billed to Northwest  
19 Resources, Taylor Edgerton at that UPS store box that you  
20 heard about. And Joe Laxague sent them, he sent them  
21 regularly. What did Taylor Edgerton tell you about this, that  
22 Joe Laxague said, don't worry about it, you don't need to pay  
23 them. Why? This is all a fraud.

24 What do you see here bottom left, these are the  
25 rates, Joe Laxague, \$325 an hour; Gunter and Clark \$475; and

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1 Kyleen Cane \$500 an hour. She ran this law firm. She by far  
2 had the highest billing rate.

3 What did Taylor Edgerton tell you that Joe Laxague  
4 said at that meeting in Las Vegas, I'm trying to make partner  
5 in this law firm. That's what he's doing for Kyleen Cane,  
6 helping finding fake shareholders, setting up these companies.

7 Here, these text messages are critical. These are  
8 the texts that Joe Laxague and Kyleen Cane have about selling  
9 Northwest Resources. This is March 2013 so it's a couple  
10 years after Northwest Resources was set up. As you know from  
11 Taylor Edgerton, Northwest Resources had nothing going on, a  
12 mining company, a fake mining company. It wasn't set up as a  
13 business, it was set up to be sold. Kyleen Cane is directing  
14 Joe Laxague on the sale of Northwest Resources.

15 Joe Laxague writes Kyleen Cane, Exhibit 129-92, I  
16 showed Jeff Chung profile of Northwest, Remington, the fake  
17 mining company, and Thompson he wants prices to buy the shell  
18 company. Northwest is not DTC, the other two are. Kyleen  
19 Cane says okay. Jeff is a slow, hard sale.

20 Kyleen Cane's witness, Mr. McCoy, told you that  
21 Kyleen Cane was in the business of selling shell companies.  
22 This is her business, this is what she's doing. She's dealt  
23 with these sales before, Jeff is a slow, hard sale, she sold  
24 shell companies to Jeff before. What is important here?  
25 Northwest is not DTC. You heard from DTC the Depository Trust

1 Company, that's where you go to make your shares tradeable so  
2 you can put them in DTC and get that CD and code label and now  
3 you can trade. So they are talking about which of these  
4 shells are already in DTC, which ones are ready to go, which  
5 are held. Laxague is telling her not DTC.

6 Then here, June, still talking about Laxague says,  
7 Lazar wants to know acting price for Northwest non DTC and  
8 Thompson. Kyleen Cane responds, I'm 90 percent sure he's  
9 dicking you around. Tell him 300 for both and we deliver  
10 fresh DTC with Northwest. Kyleen Cane is leading this charge.  
11 She knows exactly what is going on. Northwest is another fake  
12 mining company, a fake shell company. She's telling him they  
13 got to pay \$300,000 for this shell of Northwest. We'll  
14 deliver fresh DTC; in other words, she will take those fake  
15 shareholders' shares and send them to the Depository Trust  
16 Company so she can start selling them.

17 She is saying here, the person buying this, I can  
18 give you fresh DTC. I can we can get it out there so you can  
19 sell them. She clarifies, 300K each.

20 Then Joe Laxague, should I quote Burton 300 for  
21 Northwest Resources, too? Who is in charge here? Not Joe,  
22 he's asking the boss, what are we quoting these companies for.

23 129-97 Laxague writes, David Lazar wants a price of  
24 Northwest resources NWR non-DTC sell. What should I quote  
25 him? She says 285. Keep in mind this is October 2013. Last

1 ones were in March 2013, and the one we just saw was  
2 June 2013.

3 They are having a hard time selling this shell  
4 company. That corroborates exactly what Taylor Edgerton told  
5 you. He had the meeting in 2013 periodically with Joe Laxague  
6 saying we're having a hard time selling the shell companies.  
7 Kyleen Cane and Joe Laxague are working together trying to  
8 sell Northwest Resources and are having a hard time.

9 Here is what I've been talking about, this is all so  
10 important because those fake Northwest Resources shareholders  
11 become the fake Cubed shareholders. Here are the texts --  
12 excuse me -- let me back up for one moment.

13 How do they become a Cubed shareholders? Who  
14 ultimately buys the shell of Northwest Resources for their  
15 manipulation scheme? AJ Discala and Marc Wexler. And when  
16 they buy that shell, AJ Discala buys it because he's dealt  
17 with Kyleen Cane before, as you'll see from the text messages  
18 coming up, he's excited to have her back. He's excited to  
19 work with her, work with her escrow scheme here. They buy  
20 that shell to complete this.

21 Here you have the text messages, January 2014 now.  
22 Discala writes to Cane, what a day can't wait to have you back  
23 GP. You heard Agent Voulgaris testify from his investigation,  
24 GP is Guardian Princess, that's how he referred to Kyleen  
25 Cane. She says glad to be back. Discala says, not as glad as

1 me.

2 Why is he so happy? The same reason he's texting  
3 Bell and telling others, Kyleen Cane has this escrow account,  
4 this account with these fake shareholders so she can control  
5 all the shares and nobody to get in her way.

6 Here is the purchase. Here is the purchase of that  
7 shell. Discala through Omni View pays 225,000; Marc Wexler  
8 pays 100,000. What does that say, you are hereby directed to  
9 release and distribute all of said funds as directed by  
10 Oxbridge Technology Partners Inc. in the above referenced  
11 escrow.

12 This the escrow account they are buying. They are  
13 buying the shell along with the escrow that Kyleen Cane has  
14 set up. Oxbridge Technology, which you'll see later, a  
15 company Kyleen Cane is using to conceal all of this, states  
16 here in this document, we'll be transferring. What is going  
17 on around the same time, March 14, about a month-and-a-half  
18 later, before the merger has taken place, he says to Kyleen  
19 Cane, because they are still working together on this, please  
20 call me on Northwest Resources. George is saying we should,  
21 AK the name change now to explain why it doesn't show up in  
22 the data SOS records. George. George Castillo from Glendale,  
23 we'll go through him in detail.

24 He's saying we should get AK out to change the name  
25 from Northwest to Cubed; that happens on this day, March 14,

1 129-103. The company becomes Cubed. They have forward stock  
2 of 2.67 shares.

3 Here now we're coming up shortly on our break. This  
4 is also an important document in understanding the formation.  
5 These are Empire Stock Transfer records. Records that you  
6 heard a witness discuss, Empire Stock Transfer is a company  
7 that holds stock certificates. Stock certificates for Kyleen  
8 Cane's company -- her law firm uses them to hold stock  
9 certificates of companies.

10 Here on March 18, a few days after this stock split,  
11 goes to Empire Stock Transfer and picked up the stock  
12 certificates for all of these 30 fake shareholders. Picks it  
13 up. Why is that important that he picks up the stock  
14 certificates? Because they go back to Kyleen Cane. Stock  
15 certificates is what you need to own the shares, what you need  
16 to give to provide a DTC so you can trade those shares. Who  
17 has all the certificate? Kyleen Cane does. She gets all  
18 these stock certificates so none of these individuals listed  
19 on here, none of the 30 individual can trade any of their  
20 shares. They are out of the picture.

21 She picks them up. If we went through this list,  
22 this has broken up in the middle to show it to you, but it's  
23 the same individuals Taylor, Marche Godffrey, Marcus Cohen.  
24 The one different individual here right in the middle, David  
25 Ben-Bassat. That's because Kyleen Cane already transferred

1 one of those fake shareholders to David Ben-Bassat, her close  
2 friend, so she can start selling those as part of the scheme.  
3 That's what they are picking up here. They have to close the  
4 loop on here.

5           What happens next? Taylor Edgerton, remember how he  
6 had the 8 million restricted shares as CEO, he's now no longer  
7 the CEO because Northwest Resources is being sold. But after  
8 that 2.67 stock split, the shares get split by 2.67, he had a  
9 little over 21 million. Cane Clark wrote it up, such that  
10 6 million of those shares canceled, disappeared. Another 15  
11 restricted from Taylor Edgerton will be purchased to get him  
12 his \$20,000.

13           This on the right, are the people/entities buying.  
14 What is this so important, one of these buyers NPNC  
15 Management, that's Kyleen Cane's company. She's buying  
16 1 million restricted shares from Taylor Edgerton. And she's  
17 buying them -- first here are the records showing you that  
18 NPNC is Kyleen Cane's company. There's her signature. Here  
19 are the records, 194-1.

20           Here is her check to Taylor Edgerton. Kyleen Cane  
21 on the bottom right, her signature, stock purchase agreement,  
22 she's buying 1,000 restricted shares, now with Cubed, for less  
23 than a tenth of a cent, that's nothing. And Cubed, as you  
24 saw, will start trading at five and go into the sixes even  
25 reach seven. And that means she's got restricted shares worth

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1 nearly \$7 million. She got them for essentially nothing by  
2 paying a fake CEO, Taylor Edgerton, of Northwest Resources to  
3 get them.

4 Again, not with her real name, because neither AJ  
5 Discala nor Kyleen Cane does anything in the real name. NPNC  
6 Management, another thing to conceal.

7 Here is another check, this is from Cane Clark  
8 escrow, same address as her law firm, same address as NPNC  
9 Management. Here is \$800, that's for another guy's shares,  
10 Branislav. There is another check to Taylor Edgerton. She  
11 knows exactly what is going on. Paying off the CEO of the  
12 fake company so she can have restricted shares to profit from  
13 the scheme.

14 MR. HEIN: I think this might be a good time to  
15 break.

16 THE COURT: Okay. Ladies and gentlemen, we're going  
17 to take a ten-minute break. Keep an open mind. Do not  
18 discuss the case amongst yourself or anyone else. We'll see  
19 you in ten minutes.

20 (Jury exits the courtroom.)  
21  
22  
23  
24  
25



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1 THE COURTROOM DEPUTY: All rise. The court is back  
2 in session.

3 Counsel for both sides present, including the  
4 defendants.

5 THE COURT: Are you ready to resume?

6 MR. HEIN: Yes, Your Honor.

7 THE COURT: We advised the jury to get a couple of  
8 snacks to tie them over until lunch.

9 MR. HEIN: Thank you, Your Honor.

10 MR. BINI: Thank you Judge.

11 (Jury enters the courtroom.)

12 THE COURT: Be seated, please.

13 Counsel will stipulate that the jury is present and  
14 properly seated.

15 MS. JONES: Yes, Your Honor.

16 MR. ROSS: Agreed, Judge.

17 MR. RIOPELLE: So stipulated.

18 THE COURT: All counsel concur. Thank you.

19 Ladies and gentlemen, hope you had a chance to eat  
20 that snack to fortify you a bit. We're ready to resume with  
21 Mr. Hein in his closing argument on behalf of the United  
22 States.

23 MR. HEIN: Thank you, Your Honor.

24 Ladies and gentlemen, when we left off the break, we  
25 were on Government Exhibit 196-21.

1           This chart here shows the shareholders of Cubed.  
2 First with the restricted shares. There are about 22 million  
3 restricted shares of Cubed, 67 shareholders.

4           I showed you the chart prior where 15 million of  
5 those were purchased were purchased off of Taylor Edgerton,  
6 and DTC Management, Kyleen Cane's company held 1 million of  
7 those restricted shares. But the more important part of this  
8 chart is what's in the yellow and the green. The free-trading  
9 shares. Because as you know, the free-trading shares is what  
10 Kyleen Cane uses to sell into this manipulation scheme.  
11 Here's why it's so important.

12           And know it's hard to read, but in the top left of  
13 this chart, there's approximately 8 million free-trading  
14 shares of Cubed. And that's because remember Taylor  
15 Edgerton -- excuse me, you remember the 30 shareholders  
16 initially from Northwest Resources bought 3 million shares  
17 together.

18           Now, after the 2.67 forward stock split, there are  
19 approximately 8 million free-trading shares. And why it's so  
20 important is that Kyleen Cane held control of those entire  
21 8 million in the escrow account.

22           And the green portion is important, and I'll big  
23 deeper into this in the remainder of the presentation. But  
24 these are the shares that she moves to be traded, moves to DTC  
25 and Cede & Co. name so they are tradeable, so that she can

1 sell them as part of the manipulation scheme.

2 And the yellow, the yellow here on this chart are  
3 the free-trading shares that she is still holding that she  
4 hasn't released yet to be sold. And she controls all of them.

5 Now, we talked about concealment. I showed you  
6 something similar for CodeSmart, where AJ Discala, his name  
7 was nowhere to be found in the SEC file that stated who held  
8 more than 5 percent of the company. The exact same thing with  
9 Cubed.

10 Kyleen Cane controlled the full 8 million  
11 free-trading shares at approximately 30 million. That's more  
12 than 25 percent of the company. And her name and her name is  
13 nowhere to be found on Cubed's filing with the SEC about who  
14 owns the stock.

15 As you see in the footnote, beneficial ownership.  
16 The point is the public needs to know who has investment  
17 power. Who holds these shares. Who really holds these shares  
18 regardless of whether it's named or not. Kyleen Cane isn't  
19 mentioned on there, and none of these other entities are  
20 mentioned on there as well.

21 Concealment. Why is concealment so important.

22 We saw what was so important in AJ Discala's scheme  
23 where he had money in Marleen Goepel protecting and trading in  
24 her account. OmniView and Fidelis, without his name as a  
25 signator. It's because they're conducting an illegal

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1 fraudulent scheme. And they don't want their names out there.

2 And that's exactly why Kyleen Cane has her MBAC  
3 Management holding 1 million restricted shares. And that's  
4 exactly why she holds these 8 million free-trading shares in  
5 the name of those 30 shareholders; Marche Godffrey, Peter  
6 Hirschfeld. He didn't know anything about this. But she has  
7 his shares in his name still, but she is holding them. And  
8 she's concealing that because she's operating under the radar  
9 to not get caught.

10 Now Wexler. He explained to you his understanding  
11 of his escrow account, of the holding of these free-trading  
12 shares. And here's what he said.

13 He was asked: And so the deal structure change when  
14 Ms. Cane became counsel for Crackpot.

15 He said: Yes, it did. It went from a reverse  
16 merger into a publically-traded shell to investors who put  
17 money into the deal for free-trading shares. And would now  
18 own a percentage of the escrow account.

19 And there's the point. In CodeSmart, as you saw  
20 from that chart, AJ Discala and the co-conspirators, they  
21 actually got the free-trading shares. Matt Bell got a stock  
22 certificate, and then you could sell those shares and destroy  
23 the scheme.

24 With this escrow account, nobody actually gets any  
25 stock certificates. Kyleen Cane's holding control of all of

1 it, as the free-trading shares of those 30 big shareholders.

2 And when you say nobody received shares in their  
3 name that were held by Ms. Cane, what the type of shares are  
4 you talking about?

5 Free-trading shares, Mr. Wexler says.

6 And what was your understanding of who came up with  
7 this idea? Ms. Cane.

8 Wexler tells you on pages 2085-86: My understanding  
9 was that shares, free-trading shares were controlled by  
10 Ms. Cane, and when they were sold, the proceeds would then be  
11 sent into an escrow account and then be distributed  
12 shareholders from there.

13 When what was sold? The stock on the open market.

14 Who was supposed to be in charge of selling that  
15 stock? Ms. Cane.

16 And that's how it was set up. She held the  
17 free-trading shares. She would sell them out for profits.  
18 And then the point of the escrow and the co-conspirators who  
19 were involved and other investors the co-conspirators brought  
20 in, they didn't know that this was some big scheme, they would  
21 get these little distributions out of this escrow account.

22 And the point is, it's an upgrade. Because when she  
23 holds all the shares, she doesn't have to worry about the  
24 co-conspirators or other people getting in the mix and selling  
25 their shares and hurting the price.

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1           Jamie Sloan explained her understanding of the  
2 escrow account similar. I believe the escrow account would  
3 make it a lot easier to control the stock price. The problem  
4 with ITEN, that's CodeSmart, is that too many people were  
5 selling the stock. We're selling the stock. First AJ was  
6 mostly selling it. But after that, the stock can be bought in  
7 the open market, he couldn't control the selling so my  
8 understanding the stock was in all -- if the stock was all in  
9 one place with Ms. Cane, then the stock price would be easy to  
10 control.

11           Now, let's start discussing it. We talked about the  
12 control. We talked about concealment that Mr. Cane is leading  
13 here. Now let's talk about her and AJ Discala and other  
14 co-conspirators carrying out the artificial manipulation of  
15 the stock.

16           Here are the free-trading shares. This chart here,  
17 196-24, this is laying out for you who those shareholders were  
18 that we saw in the yellow and green portion of that pie chart  
19 we just looked at with their names. And if you look at these  
20 names, you see up there Chad Washington at the top left, and  
21 it goes on. Marcus. Marche Godffrey. Marcus Poe. All of  
22 the names of those fake shareholders who had nothing to do  
23 with this.

24           And you see in the blue -- even before Northwest  
25 Resources official officially became Cubed, Kyleen Cane moved

1 stock from Chad Washington, I submit to you he's another fake  
2 shareholder who had no idea what's going on the stock, and she  
3 moved into the name of some old family friend, a man who dated  
4 her mother for years, who you heard from, David Ben-Bassat.  
5 Now, as you see, he had 267,000 shares. That's because that  
6 2.67 forward stock split.

7 And she put it in there, in Ben-Bassat's name, and  
8 she had Ben-Bassat set up his Glendale Securities account that  
9 she controls under his name. Again, concealment. And then  
10 she moved his shares to Cede & Co. under DTC so that they can  
11 be traded and she can trade them on the open market.

12 And you can see on the far right of the chart, on  
13 April 22nd, to Glendale Securities which George Castillo, a  
14 corrupt broker with whom she was working with. And those are  
15 the steps she took to get this manipulation scheme to work.

16 We'll go through the rest of this chart later, but  
17 what we will see, too, is that Marche Godffrey, the gentleman  
18 who testified, remember him, the sunglasses. He had no idea  
19 what happened to his shares after he was paid \$40.

20 She later, in June, moved his shares to Cede & Co.,  
21 because that was the next tranche of shares that she wanted  
22 that she was going to release and start selling on to the  
23 market. And JPMorgan, you heard an individual from JPMorgan  
24 testify about those records.

25 Keep in mind when we look at the second column of

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1 March 18, 2014, David Ben-Bassat. Under each of those names  
2 is 267,000 shares. Those are each what AJ Discala will say in  
3 calls he refers to as the escrows. There are five escrow as  
4 out there. Five tranches of 267,000 shares that Kyleen Cane  
5 can decide when she wants to release them into the open market  
6 to be the selling portion, the rigged trading, to walk the  
7 price up for her profit.

8 Now, here you have the records showing the transfers  
9 made. Chad Washington. David Ben-Bassat. And here's this  
10 what they call "irrevocable stock" where Chad Washington, who  
11 I submit to you, had no idea what was going on here. And I  
12 submit to you he didn't sign this document. He's giving his  
13 shares to David Ben-Bassat, Kyleen Cane's close friend.

14 David Ben-Bassat told you he had no idea what was  
15 going on. This is an individual who stood up here and  
16 testified and said he cares deeply for Kyleen Cane, right? He  
17 didn't want to be here and testify. But he told you: I had  
18 no idea what was going on with my account. I did these things  
19 as a friend of Kyleen Cane. These shares are being  
20 transferred to him. He doesn't know that.

21 What does it say here at the bottom, who the bill  
22 should go to? Cane Clark. Cane Clark's arranging all these  
23 transfers. He transferred from Chad Washington to Ben-Bassat  
24 as part of the scheme that Kyleen Cane is carrying out.

25 And here's an example of the one of the stock



1 certificates. David Ben-Bassat, for 267,000 shares. He  
2 testified he never got the stock certificate. He didn't know  
3 what was going on. This stock certificate Kyleen Cane sent  
4 over to DTC so she could sell his shares.

5 Now, on the point of concealment, why is Kyleen Cane  
6 selling these shares through David Ben-Bassat? Why isn't she  
7 transferring from Chad Washington to herself? Because she's  
8 doing something illegal. She's carrying out an illegal scheme  
9 and wants it to be under someone else's name. That's why  
10 David Ben-Bassat is used here as a pawn.

11 Now, Cubed went public on April 22nd, 2014. These  
12 are the weeks preceding it, after its -- after its been merged  
13 in, it now exists at Northwest Resources, but it's not trading  
14 on the market. And Marc Wexler is writing Kyleen Cane on  
15 March 28th. And he says: Great work and hustle, any word on  
16 DTC?

17 As you see in a lot of these texts, as Marc Wexler  
18 testified, he really wanted to get this conspiracy moving. He  
19 want to get this manipulation scheme moving. At times faster  
20 than Kyleen Cane wanted, because she is a cool, calculated  
21 person who carries this scheme out at in gradual increments.  
22 She doesn't want regulators to detect. She wants it to go  
23 just as she knows it should. And he's asking her: What's  
24 going on here? He says: Just need one trade to show it.

25 What does he mean there? He means we just need to

1 get one trade of Cubed stock out into the market at a certain  
2 price to set that floor. Right, that price isn't going to be  
3 based on anything under normal market conditions of what Cubed  
4 is worth. We just need to trade out there. She responds:  
5 I've been working with DTC all morning trading.

6 March 27th, what happened the next day. That is the  
7 first trade in Cubed, march 28th, for \$5 for a volume of 200  
8 shares. That trade is later canceled.

9 Now, why is that so important? Because that sets  
10 the floor of Cubed. All of a sudden you get a 5-dollar trade  
11 out there. Imagine how much all of these shares are worth  
12 that individual holds. All of sudden there are 8 million  
13 free-trading shares that Kyleen Cane owns worth \$40 million.  
14 For 1 million restricted? Worth \$5 million. They are setting  
15 this price and they're working their way up from here.

16 Who placed this trade? Documents in evidence show  
17 that the individual who placed this trade, an individual named  
18 Michele Plum. Where does she work? She works for Kyleen Cane  
19 at Cane Clark, in an administrative position. She placed this  
20 trade and then it was canceled. And it was to set that first  
21 price of this stock, just as Wexler had said. We just need  
22 one trade to show it, to show what the stock start up, and  
23 then we move with our manipulation.

24 Now, Ben-Bassat. This is his Glendale Securities  
25 account. Again he testified: I had nothing to do with these

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1 accounts. Kyleen Cane ran it. She told me what to call  
2 George Castillo trade in at. And when I got these account  
3 statements, I put them in a stack and I gave them to Kyleen  
4 Cane. Nothing to do with me. So she could review them.

5 Now in February 2014, before this scheme takes place  
6 in March, this account, this account here at Glendale  
7 \$300,000.

8 Now in March, after the 267,000 shares go into his  
9 account that Kyleen Cane puts in, it's worth 1.5 million. Why  
10 is that? Because here Cubed says they bought for 267,000.  
11 Those are the shares that Chad Washington originally had, fake  
12 shareholder.

13 Now, the market price value at 5, because of this  
14 canceled trade placed on March 28th, it's got a value of  
15 \$1.3 million.

16 Now, here, a few weeks later, April 17th. Cubed  
17 still hasn't gotten on the market and trading. And AJ Discala  
18 is asking: When is this going to happen? And he says: I  
19 really need it to trade. I got egg all over my face. Because  
20 AJ Discala's been bringing in investors who are not aware of  
21 what's going to happen with the stock. He's got other  
22 co-conspirators, and he wants to get this manipulation scheme  
23 going.

24 Any update on DTC? He wants to know when she's  
25 going to start selling David Ben-Bassat's shares.

SUMMATION - MR. HEIN

3551

1 Kyleen Cane responds: Glen has instructions for  
2 Monday morning. That's Glendale. That's George Castillo, the  
3 corrupt broker with whom she's working.

4 And who did he have instructions from? He had  
5 instructions from Kyleen Cane. Instructions from her as to  
6 how the scheme is going to work and how much they are going to  
7 sell, at what price and when. Because she's running this.

8 She says: I'll follow through Monday morning to  
9 make sure instructions are followed.

10 Kyleen Cane is a leader, the leader of this Cubed  
11 manipulation scheme. She's critical. She controls the  
12 8 million float. She controls the free-trading shares. She  
13 controls when they are going to be sold. And she is working  
14 with AJ Discala and the co-conspirators to carry out the  
15 scheme.

16 Discala writes to her on April 19th, two days later:  
17 Three days from now is when Cubed starts trading. And he  
18 writes: Make sure there's enough at 525. Don't want it going  
19 any higher.

20 What does he mean there? He meant, hey, make sure  
21 to get enough shares out there so we can walk this price from  
22 \$5 to 525. But I don't want it to go any higher, I want to do  
23 this gradually.

24 And she says: This is what we should talk about.  
25 Not text. I'll call you tomorrow. Very important.

1           Step back. Use your common sense. What does Kyleen  
2 Cane mean when she says: We she should talk about this, not  
3 text. She doesn't want to create a record. She doesn't want  
4 to create a record in texts or emails. And you'll see this in  
5 most of the calls.

6           She doesn't want to talk to Darren Goodrich about  
7 the escrow account and what it is on the phone. AJ Discala  
8 will say in many emails: She doesn't want to talk about the  
9 escrow. Why? Because it's illegal. And she doesn't want to  
10 spread the word on that. And she does want to talk that  
11 Darren Goodrich on the phone, she wants to meet with him in  
12 person to discuss this illegal scheme that she set up. And  
13 here, let's talk about it, not text. I don't want a record of  
14 this.

15           And here's the trade. This is the trade chart.  
16 Who's selling? The green bars at the bottom are from David  
17 Ben-Bassat's account. That's what Kyleen Cane is selling  
18 through David Ben-Bassat of Cubed shares starting April 22nd.

19           And look at those first four trading days and you  
20 see exactly what we saw on CodeSmart, the max trades. The  
21 volume on what she's selling and on the co-conspirators who  
22 are buying almost identical.

23           Now, take a look at the accounts that are buying  
24 that volume. Dounya Discala, AJ's wife. Joe Discala, AJ's  
25 dad. Victor Azrack and his father. Matt Bell, a

SUMMATION - MR. HEIN

3553

1 co-conspirator. Marc Wexler, you heard from him. And these  
2 other individuals who are your co-conspirators with AJ or, as  
3 you see, we have certain victims in here: Igor Gefter,  
4 Eliezer Zupnick. And they're buying because they have  
5 accounts at Meyers Associates, where Jamie Sloan is a  
6 co-conspirator. And they don't know what's going on here.  
7 But Jamie Sloan is buying it for them. She's buying it for  
8 them so they can make this manipulation scheme go.

9 Matched trades the first day. The other ones you  
10 see there are rigged trading. And rigged trading is illegal,  
11 just like rigged trading is. Rig trading means you've got  
12 people who are selling and people who are buying in  
13 coordination to walk the price up.

14 Government Exhibit 196-12. What you see here in the  
15 red line, that's the stock price of Cubed, March 28th through  
16 June 3rd. And you see how gradual that increase is in the red  
17 line until May 23rd, the day that it spiked. And we'll talk  
18 about it, and they try bring to back down.

19 It spikes on May 23rd and it continues to gradually  
20 increase. That's the manipulation scheme that Kyleen Cane and  
21 AJ Discala, co-conspirators, carried out.

22 And the bars. The bars show you of the volume. And  
23 you'll see those first four days. It's almost entirely green.  
24 That means the volume that Kyleen Cane was selling, she was  
25 essentially the entire volume of what's being sold in the

1 stock. No one else is participating. She's walking the price  
2 up by selling.

3 On the top left. David Ben-Bassat's account totals  
4 over 103,000 shares in this period for the gross proceeds of  
5 \$600,000. That's the money Kyleen Cane made from this.

6 Now, she was preparing to make much more when she  
7 was arrested by the FBI, but that's the money she made from  
8 this scheme up 'til now, at the expense of investors, of  
9 victims.

10 This chart shows the prices at which David  
11 Ben-Bassat's account controlled by Kyleen Cane sold on each of  
12 those days.

13 What do you notice about it? It essentially  
14 identically matches the stock price. That's because she's the  
15 entire volume. She's pushing this price up. She's selling at  
16 gradual prices to walk this thing up.

17 I want to dig a little into the first few days of  
18 this rigged trading in Cubed stock, April 22nd through 25th.

19 Here's the exhibit. The first day. If you take a  
20 look at what the volume was, David Ben-Bassat sold 17,320.  
21 Take a look at the entire. He had all the volume of a hundred  
22 shares. Selling at price and it closed at 520. An increase  
23 of 20 cents in the first day.

24 Now what does Marc Wexler write to Kyleen Cane the  
25 next day: Good morning, Kyleen the next morning. Before

1 opening of the market.

2 He says: Good morning, Kyleen. Great day  
3 yesterday. We had every share pegged. Trading looks great.

4 What does he mean by "every share pegged?" He means  
5 that, hey, Marc Wexler, AJ Discala, the co-conspirators,  
6 bought up and pegged every share that she's selling out. And  
7 that's what they want, the closer you can match the buys and  
8 sells, the more control you have and you can walk it up. And  
9 he's telling her: We had ever share pegged. In other words,  
10 we're buying all that stock you're selling, just as we're  
11 planning to do, it's working.

12 And she just takes it in stride. She talks about:  
13 I'm in Hawaii, I'll talk to you when I return.

14 She's not writing, what are you talking about? What  
15 do you mean, every share? What's going on? No. She knows  
16 exactly what he's talking about because she's in the scheme  
17 with him. Every share pegged good. I'm selling and you guys  
18 are buying. Co-conspirators carrying this out. Government  
19 Exhibit 129-30.

20 And here's the account, April 22nd, 17,320 shares at  
21 \$5.13. And April 23rd, 20,550 shares at \$5.25. The price is  
22 going up. That volume represents essentially the entire  
23 volume of the stock that's being sold. Again, she's selling  
24 the market just as the system was planned. And here you see  
25 all the hundred shares and the price rices again to \$5.25 on



1 April 23rd.

2 Now this in the evening on April 23rd, Wexler: You  
3 think we can take -- you think we can take up -- take it up to  
4 at least 530 tomorrow?

5 This is the manipulation. This is the intent on  
6 both of these parties. This is the proof of knowledge. These  
7 things, when we go through here, when you're looking at these,  
8 he's saying, hey, Kyleen can we take it up to 530? Because  
9 they're walking the price up.

10 Wexler knows exactly what's going on. And Kyleen  
11 Cane knows exactly what's going on. How do you know that?  
12 What does she write that evening? She writes to David  
13 Ben-Bassat: Here's George number, George Castillo at  
14 Glendale. And she's tells him: CRPT, Cubed, between 535 and  
15 530.

16 She's following through on exactly what Marc Wexler,  
17 her co-conspirator, is saying. Can we take it to 530? And  
18 she's writes David Ben-Bassat, who is concealing her trades,  
19 and saying: Here's your instruction. You call George at that  
20 number, George Castillo, and you tell him he should buy at  
21 that amount to walk it up to 530. That's your conspiracy.  
22 That's your securities fraud. That's your wire fraud.

23 What does David Ben-Bassat write to her once he's  
24 done this the next morning. He writes: I'm done with George.  
25 I feel like I should have a reality show on HBO called, The

SUMMATION - MR. HEIN

3557

1 Idiot Who Knew How to Trade Stocks. And she writes back: You  
2 should be on Shark Tank. And he says: More lake Carp Tank  
3 and as he explained, he meant Crap Tank.

4 Why? Because he told, I'm an idiot when it comes to  
5 stocks. I have no idea what I'm doing. I'm just following  
6 her instruction. She's a close family friend of mine. That's  
7 why he is going forward with this.

8 And there's the trade placed at 5.291. Exactly what  
9 Marc Wexler intended and asked Kyleen Cane to do, and exactly  
10 what she instructed to happen. That's your rigged trading,  
11 right there.

12 What do you see on this? This is 180-2. This is a  
13 call that David Ben-Bassat had on these days. You can see  
14 here with Glendale and with Kyleen Cane's home and office.  
15 And he's corroborating. He's showing his support. David  
16 Ben-Bassat: What's going on here?

17 On April 22nd, he's got these calls to Van Nuys,  
18 California, the 800 number, that's Glendale Securities.  
19 That's calling in the trades. Las Vegas, Nevada, that's  
20 Kyleen Cane number.

21 He getting calls from Kyleen Cane. She's  
22 instructing him to do stuff. He's passing it on to Glendale.  
23 And here he's following up with Kyleen Cane.

24 You see the same thing these other dates.  
25 April 23rd. Calling Glendale. Placing the trades. And then

SUMMATION - MR. HEIN

3558

1 April 24th. This the one we just looked at. On the night of  
2 April 23rd Wexler said: Let's take it to 530. She texts  
3 Ben-Bassat late that night, that evening, and she says: 525  
4 to 530, here's George's number. And the morning of  
5 April 24th, he calls George, just like he texted her and  
6 placed that trade for him.

7 What did Ben-Bassat say when we asked him about his  
8 role in this? We asked him: Sir, I'd like to ask you about  
9 this Glendale brokerage account we talked about this morning  
10 and now this afternoon. Do you feel you were mislead? He  
11 says, Yes.

12 We asked: Would you ever open a brokerage account  
13 for Kyleen Cane or anyone else in your name that's not going  
14 to be used by you? Not in a million year.

15 Do you remember I said: Did you do any trading in  
16 Cubed in your Glendale account? No.

17 Who, if anyone, gave you instructions for any trades  
18 you made in the Glendale stock? Kyleen.

19 Did you receive any profits from the Glendale  
20 account? Not a penny.

21 This is the long time friend of Kyleen Cane, who  
22 said he was like family, together with her mom for a long  
23 time. Here he's telling what happened in his Glendale  
24 account, and the fact that Kyleen Cane controlled it.

25 Let's talk about a little bit about the escrow

1 account.

2 On May 3rd, Marc Wexler writes to Kyleen Cane,  
3 Government Exhibit 129-38: We'll be in really good shape if  
4 you think we can get to a point of even a small distro,  
5 distribution, in the next 60 days or so. I know we need  
6 execution, but if we are able we'll be able to go back to  
7 everyone easily. And she says: Agreed.

8 That's agreement on the conspiracy. Here's the  
9 escrow account. They've been selling now for about ten days.  
10 He's been buying. She's been making money out of it from the  
11 Ben-Bassat account.

12 And now part of their conspiracy is to dribble out  
13 some distribution to the co-conspirators, because remember,  
14 unlike the co-conspirators in CodeSmart who got the stock  
15 certificates, Marc Wexler and other co-conspirators didn't get  
16 them. They're getting their money through Kyleen Cane.

17 (Continued on next page.)  
18  
19  
20  
21  
22  
23  
24  
25

SUMMATION - MR. HEIN

3560

1 MR. HEIN: They're getting their money through  
2 distributions from the escrow account. That's how this  
3 portion of the conspiracy works. Matt Bell told you his  
4 understanding of the purpose of the escrow account. He says,  
5 The purposes I was told was to hold freely-tradable shares  
6 going to be sold at a profit and split among coconspirators.

7 We asked Mr. Bell, is it normal to have one person  
8 controlling all the free-trading shares in the company. He  
9 said no, because if you control all the free-trading shares,  
10 you control the stock price as well. Absolutely. And who  
11 controlled the escrow account containing all of these  
12 free-trading shares for Cubed? Discala, Ms. Cane.

13 Now, during this first week of May, 2014, while Cane  
14 continued to regularly sell Cubed and Discala and Wexler and  
15 other coconspirators oversaw the buy side of these trades with  
16 other coconspirators, they also were working with Darren  
17 Goodrich and BMAC. And Darren Goodrich, and you will see him  
18 on some calls, you've heard about him, he was interacting with  
19 Discala, longtime friend, wanted to get in touch with Cane  
20 because he was going to be another corrupt broker to help them  
21 spread to get more investors, to spread the word on this to  
22 help this stock manipulation scheme continue to rise with new  
23 investors, and he was at BMAC. Here's a call on May 5th  
24 between Discala and Goodrich.

25 (Audio played.)

SUMMATION - MR. HEIN

3561

1 MR. HEIN: So this call, Government Exhibit 198-3,  
2 this is Overt Act D. In other words, it's another act in  
3 furtherance of the conspiracy, because what Discala is doing  
4 here with Goodrich is exactly -- he's asking him, as a  
5 market-maker, as his corrupt broker, to rig the bids here.  
6 He's trying to close the spread, which we talked to you about  
7 before, and he's saying it's 4 51 and the price is at 5 26.  
8 It messes up the optics, right? We need to make this look  
9 like a real company to investors. We gotta (sic) close that,  
10 and he's saying that about the 4 51. When he's jumping on the  
11 call initially with Goodrich, he's saying to somebody, Get  
12 Craig on the phone right away. Yeah, right away. Who's that?  
13 That's Craig Josephberg at Halcyon, his other corrupt broker.

14 You see that with several of these calls. He's  
15 always on the phone with other corrupt brokers to get them to  
16 close the box to keep the spread tighter, to make this look  
17 like an attractive company to investors, artificially. This,  
18 of course, is Cubed stock price we're talking about here.

19 Now, May 6th, let's listen to another call. This  
20 one is between Discala and a guy named Paul Turino -- John  
21 Turino.

22 (Audio played.)

23 MR. HEIN: This is what Discala thinks of Cubed, and  
24 this is what he thought of CodeSmart. He doesn't care at all  
25 about the company. He's not in it to protect the company,

SUMMATION - MR. HEIN

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1 he's not in it to help the company. He's in it for himself.  
2 He's in it to make money for him and his coconspirators. He  
3 goes, We're out before the effing company will even see if  
4 Cube works. He doesn't even care whether this Cube ever  
5 works. Again, none of this is based on the merits of a  
6 company or the prospects of the company, it's based on a  
7 manipulation scheme, and this is what he thinks of it. And  
8 Kyleen A. Cane doesn't care about Cubed either. She cares  
9 about extracting profits from this just as Discala does, and  
10 that's exactly what she does as well.

11 Here's another call 198-5.

12 (Audio played.)

13 MR. HEIN: This is on May 6th. He's talking to  
14 another individual, Paul Lane, and he's saying, I have a funny  
15 feeling Cube stock prices is going to be double digits very  
16 soon.

17 This is not normal market conditions. This is a man  
18 who is involved in a conspiracy to walk the price up with  
19 Kyleen Cane talking about where he thinks he can get this  
20 price so he can make profits. Double digits very soon.

21 Normal market conditions, one individual doesn't  
22 know where a stock price is going, let alone where it's going  
23 to be at, and that's where he thinks he can get it, through  
24 his manipulation scheme.

25 So around the same period, Discala is talking to

SUMMATION - MR. HEIN

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1 Darren Goodrich at BMAC, he's talking about Kyleen Cane's  
2 escrow, he's talking about what Cane would pay Goodrich for  
3 his role in the conspiracy. I will play this next call here  
4 in a second. This came up yesterday in Discala's testimony  
5 regarding the 25 at 25, 50 at 25, and it's what Cane and  
6 Discala are discussing paying their brokers, their corrupt  
7 brokers, in free-trading shares at pennies on the dollars for  
8 their participation in helping this scheme along.

9 Here's the call, May 9th, a few days later. This is  
10 Count 5, Government Exhibit 198-6. This is another wire fraud  
11 count. Another wire, another call in furtherance of the  
12 fraudulent scheme to manipulate Cubed.

13 (Audio played.)

14 MR. HEIN: So this covered -- this call covers a lot  
15 of important issues to this manipulation scheme.

16 First point is here when they are speaking, this is  
17 Darren Goodrich, and Goodrich is saying, I'll call her in an  
18 hour. And of course he says she doesn't want to talk about  
19 it, you should meet her in person. And Discala says, I think  
20 she just DWAC it because I don't even have it, you know what I  
21 mean? It's all in escrow.

22 And what he's saying is, he doesn't even have these  
23 shares. All of these free-trading shares are in escrow with  
24 Kyleen Cane. And Goodrich doesn't quite understand the  
25 escrow, and that's why he wants to sit down with her, because



1 if he's joining the scheme as a corrupt broker, he wants  
2 assure that he gets his profit out of this as well. That's  
3 why he mentions, I'll talk to her. And what does Discala say?  
4 He says what -- what he's been saying throughout is, She  
5 doesn't even like to talk about the escrow. Now, why doesn't  
6 she like to talk about it? Because it's an illegal scheme to  
7 control the stock. She doesn't want to disclose that.

8 And, again, as you've seen here and as we go through  
9 the rest of the calls, Kyleen Cane is cool, calm, calculated,  
10 experienced in this stuff. She's not -- she says, I don't  
11 want to text about this stuff.

12 You know, Discala had thousands and thousands of  
13 texts with Bell on a daily basis regarding their manipulation.  
14 Kyleen Cane, she wants to keep it under the radar, and so she  
15 doesn't even want to talk about it. And then Discala tells  
16 him what his understanding of the escrow is. He says there  
17 are five escrows, and he mentions there's no stock in the 2  
18 67, and what he's referring to are those tranches of 2 67 --  
19 267,000 shares I showed you, those fake shareholders, when you  
20 go through that chart and you see those and he understands  
21 they're five, but now there are actually 30 of them, but he  
22 understands there are five of those, and that there's 267,000  
23 shares she's releasing in the market like she wants, just as  
24 she did with the David Ben-Bassat shares.

25 What else does he mention? He mentioned to him

1 being part of the team. You go talk to her and you'll be part  
2 of the team. This is the team; this is the conspiracy. These  
3 are the individuals carrying out this fraud, and you see that  
4 in the call as well.

5 And then there's the discussion of the payment to  
6 the corrupt brokers, and he talks here in the bottom right  
7 about 25 -- excuse me. It's on the top right -- but about  
8 what they pay, 25,000.25, and that's what he's talking  
9 about -- Goodrich about, when Cane pays and what they'll pay  
10 Goodrich to participate to get all these free-trading shares  
11 as a reward for their work, keeping the spreads tight,  
12 bringing investors, and doing their bidding as part of the  
13 scheme. This stock's trading at about \$6 now and they're  
14 getting these shares for \$0.25 on the dollar. That's what  
15 they're discussing doing, and he talks about how Cane likes to  
16 do it and how much he normally pays her brokers, because she's  
17 experienced. He's saying she's done this before, and you see  
18 that on the bottom right when he talks about how experienced  
19 she is, and he says, It'd be well worth your while to meet  
20 with her. I mean, she's done them all. She did 25 Berry  
21 deals, you know. She's the one we want on our side from the  
22 structure on the APO side.

23 Now, APO, you learned from Matt Bell and other  
24 witnesses, stood for alternative public offering. That's one  
25 of Discala's terms for an alternative to an initial public

1 offering, the way companies typically go public, which require  
2 more SEC filings, more expenses. Then there's the alternative  
3 public offering, the reverse mergers of the shell. He says,  
4 That's who we want, Kyleen Cane, on our side for the  
5 alternative public offering because she's done a lot of them.  
6 She sells -- she sells shells, and, as he's saying -- as  
7 Discala's saying, she's experienced in dealing with brokers  
8 who are working in her conspiracies and paying them off, just  
9 as he says here, at these shares for almost nothing compared  
10 to where it's trading.

11 And this is Count Five, another wire fraud count in  
12 the indictment. This is in furtherance of the fraudulent  
13 scheme to manipulate CodeSmart. And I just mentioned the five  
14 escrows, 2 67 each. Now, as I said, there are 30 of them, but  
15 here you see, look at that middle column, David Ben-Bassat,  
16 267,000 shares. He's referring to that as an escrow. Marche  
17 Godffrey, 267,000 shares. Another escrow, Marcus Poe. These  
18 are what he's saying she has and that she decides when she  
19 wants to release them in the market to carry out the scheme,  
20 because she's got the control over it.

21 I'm going to go through some of their continued  
22 coordinated trading of Cubed shares that went on in May.

23 I will play this call, it's between Discala and  
24 Azrak, Exhibit 198-74, this is Count Seven, another wire fraud  
25 count in the indictment.

SUMMATION - MR. HEIN

3567

1 (Audio played.)

2 MR. HEIN: Now, this Count Seven, 198-74, this is  
3 Discala's role in this Cubed portion of the conspiracy.  
4 Cane's role is on the selling side, she's issuing, she's  
5 selling out the shares, and Discala's role is to buy into them  
6 with the coconspirators to walk that price up and then also to  
7 handle what he calls optics. He always refers to optics. He  
8 wants to see how that box looks. He wants to make sure that  
9 the spread is not big between the bid and the ask because he  
10 wants to make it look like a healthy company, which it's not,  
11 it's got nothing to it, but that's what he's trying to do.

12 And this, Not held good to cancel. Good to cancel  
13 means that bid that he's asking Azrak to put in is going to  
14 stay there until he cancels it because he wants to hold that  
15 floor. He doesn't want the price to fall below there because  
16 he's walking it up.

17 And Azrak even says, Am I providing support?

18 And he says, No, it's not support. It's optics.

19 In other words, I don't want you to get hit. I  
20 don't want them to sell into you. I just want you to keep  
21 that floor and make it look like the price should be going up.

22 And he says, They're at five bucks. I want them at  
23 5 25. I'm at 5 30, 5 30, 5 31, 5 30, 5 30, 5 25.

24 That's the floor he's setting. If he puts in all  
25 those bids, price is only going to go up, not going to eat

SUMMATION - MR. HEIN

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1 through those, the price is not going to go down, and that's  
2 what he's doing with Azrak, manipulation, rigging of the  
3 stock.

4 That's Count Seven, another wire fraud count.

5 Here's Count Six, another wire fraud count from  
6 May 9th. This is Discala and Sloan.

7 (Audio played.)

8 MR. HEIN: Also, another wire, another telephone  
9 call in furtherance of the fraudulent scheme. He's calling  
10 Jamie Sloan telling her to buy 'cause that's his end of this  
11 rigged trading. Kyleen Cane is to sell, he to buy. Of  
12 course, who is he buying it through? My father, right?  
13 Another -- they call it nominee. Another individual is in  
14 your name, but you're doing it through them. It's other stock  
15 you control, like Goepel was for CodeSmart. And he's walking  
16 the price up this way, and, again he's -- he's -- they're  
17 discussing VFIN, another market-maker. That's another point  
18 that Sloan raised with you. There are different market-makers  
19 that you see on this level two screen; VFIN, BMAC, CEL. He  
20 mentioned a few of them. And what'd they want? They want to  
21 make sure that spread is tight for all of them. So what Sloan  
22 described to you, he would call in and say, Do VFIN now, do --  
23 because he's looking at that box and he wants the optics to  
24 look just right to misrepresent to the investing public what  
25 this stock is actually worth and how it's traded.

SUMMATION - MR. HEIN

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1           This is Dave Ben-Bassat's account statement. These  
2 are the shares that Kyleen Cane is selling during this period,  
3 April 28th through May 9th. We just listened to calls from  
4 that period, we saw what Discala is doing on the buy side,  
5 what he's doing on the optics, and she is selling. She is  
6 selling these shares as part of the conspiracy to work the  
7 price up, and you see that here.

8           Now, around this same time, May, also in April,  
9 Discala and Cane are out there with their, what they call,  
10 IRPR -- investor relations/public relations. These are the  
11 people who are supposed to get the name of the stock out there  
12 to try to build an investor base that they can deceive into  
13 this, to bring in victims who will buy into this, help them  
14 work the price up who they can profit from.

15           This next call is a call in which Discala discusses  
16 his deception of investors.

17           (Audio played.)

18           MR. HEIN: So this is Overt Act E, another act in  
19 furtherance of the securities fraud conspiracy in furtherance  
20 of the objective of it, which is to milk investors for profits  
21 for these fraudsters. May 12th, 2014, it's Government  
22 Exhibit 198-13 that we're looking at, and this first portion  
23 is talking about Jobo, who is Craig Josephberg, and he's  
24 talking to Azrak about it, and he's talking about, hey,  
25 let's -- let's -- what he refers to as shtup investors. In

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1 other words, screw them over, to stick them in here, to have  
2 Jobo stuff their accounts with stock -- Josephberg -- and  
3 let's see what happens to it. If it goes up, they can keep  
4 it. If it doesn't, leave them with it so they lose the money.  
5 And Discala says, So, by the way, you're not getting it.

6 That's what Josephberg does. That's what he's been  
7 doing. That's what Josephberg's been doing forever.

8 Let's listen to the next part of the call.

9 (Audio played.)

10 MR. HEIN: Now, when Discala testified yesterday, he  
11 testified to you this was a joke; that this was funny. This  
12 isn't funny. This is what they did to investors. It's not  
13 funny to investors. It's not funny to the victims you heard  
14 from on that stand who lost tens of thousands, if not more,  
15 money that they invested, that they didn't know that Discala's  
16 coconspirators, including Kyleen Cane, were carrying out this  
17 artificial manipulation.

18 What Discala's talking about here, he's saying, No,  
19 no, let's not just do this on the short side with one investor  
20 and screw him over, no. You gotta take the long road, you  
21 bring 'em in, milk them of their money, walk that price up,  
22 and then you take all their money, and that's what he's  
23 talking about.

24 Victor Azrak testified, he said, The calves in this  
25 story are the unsuspecting investors, investors who don't know

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1 what's going on, and that's what Discala thinks of them.

2 Let's go to the next call. It's May 20th,  
3 Government Exhibit 198-20, it's between Discala and Goodrich  
4 about BMAC.

5 (Audio played.)

6 MR. HEIN: So what you are hearing here on May 20th  
7 is Discala talking to Goodrich and Goodrich had now, as he had  
8 planned to do, met with Kyleen Cane and talked to her about  
9 the escrow, and he said, Hearing it out of her mouth, it makes  
10 complete sense.

11 He tells Discala that he described it perfectly.  
12 When he mentioned the five escrows, the 267,000 in each one,  
13 he got confirmation from Kyleen Cane when he met with her,  
14 that's exactly how this conspiracy is going to work, and  
15 that's how she explained the escrow.

16 Let's listen to the second portion.

17 (Audio played.)

18 MR. HEIN: So what are Discala and Goodrich talking  
19 in the second portion of this call about? They're talking  
20 about Kyleen Cane through her -- what I submit is her IRPR,  
21 investor relations/public relations.

22 Hopefully Kyleen will be doing her job soon. I'm  
23 sure she explained to you that she's going to get some people  
24 covered.

25 And Goodrich says, Yeah, she did. Really good.



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1           Those are the people, the promotional people, the  
2 people with news release, the people promoting the stock.

3           And Discala says, And then also when I got -- when  
4 we get to my horses, if I get some hay, my horses will eat  
5 too.

6           And actually, I think if you listen closely to the  
7 call, you'll see he says, And also when I got -- when we  
8 get -- and he says -- mentions some news. And then he says,  
9 My horses, if I get some hay, my horses will eat too.

10           Hay for the horses. Hay is news. It's press  
11 releases. And his horses? His horses are his promoters, his  
12 brokers, his buyers. If he can get some news, good news about  
13 Cubed, just like with CodeSmart, he can feed it to them so  
14 they can start bringing it in on unsuspecting investors,  
15 victims, and tell them this is a good stock, look at this  
16 news, great stock, you should invest and we'll take your money  
17 from you.

18           And as Goodrich confirms, Kyleen Cane told him she's  
19 getting some people in, yeah she's moving odds, and as we see  
20 it and we go through it, she, in fact, does get news releases  
21 out; she, in fact, does provide that part of the conspiracy.

22           Now, later that day, Discala has a call with Victor  
23 Azrak. And by the way, this is Overt Act G, another Overt Act  
24 in furtherance of the securities fraud conspiracy. This is  
25 Over Act H, 198-21.

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1 (Audio played.)

2 MR. HEIN: Again, when Discala testified, he said  
3 this was a joke. And, once again, it's not a funny joke.  
4 It's not a funny joke to the victims, to the investors that  
5 were brought into the scheme.

6 Now, you heard from Special Agent Voulgaris that the  
7 FBI began wiretapping Discala's calls with Kyleen Cane on  
8 May 21st, 2014. I will play the first call that we have here  
9 now and you will hear them discussing the specifics of this  
10 fraudulent scheme in which they are both participating. You  
11 will hear them discussing promoting Cubed stock to investors,  
12 controlling the stock price, and paying their corrupt  
13 broker-dealers for aiding the manipulation.

14 This is Overt Act I, Government Exhibit 198-23.

15 (Audio played.)

16 MR. HEIN: So this first portion of the call here,  
17 Discala's talking initially here about, Heard you had a great  
18 meeting with Darren, which Darren Goodrich said he did with  
19 Kyleen Cane, one of the calls you heard, good talk with Marc,  
20 Marc Wexler. These are all their coconspirators that they're  
21 talking about. They are on the same page here as to what  
22 they're doing.

23 And Cane tells him, I had a great call with my IRPR  
24 people -- investor relations/public relations -- people that  
25 she's enlisting to promote this stock as part of their scheme.

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1 He says, Great.

2 She also mentions two people who are going to bring  
3 in half a million dollars, some interim money. She's also  
4 bringing money in to really allow this scheme to take off.  
5 And then they both talk about a team. He says, I don't need  
6 credit. We're part of this team.

7 And then she says at the end there: I will just  
8 tell them, you know, it's part of the team.

9 This is the conspiracy. They are the team. They  
10 have agreed to this. They are working together. They're on  
11 the same page.

12 So let's listen to the rest of the call.

13 (Audio played.)

14 MR. HEIN: This call demonstrates that Kyleen Cane  
15 and AJ Discala are exactly on the same page as to this  
16 conspiracy.

17 Discala says, Have George, George Castillo, your  
18 corrupt broker at Glendale, then David Ben-Bassat, says, in  
19 counter, You're selling shares, call George. Just go 5 4 2.  
20 Have him go to 5 4 2, not 5 40.

21 Again it's the optics that AJ Discala is always  
22 worried about. He wants instead of 5 40 -- \$5.40, he wants  
23 \$5.42.

24 And then they go back and forth, and he says, 5 4 1  
25 is fine. 5 4 1 is fine.

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1           She says, Okay. All right. I'll ask him to move it  
2 up a little.

3           She doesn't say, What are you talking about? Why  
4 would you want me to alter any prices or any spreads or  
5 anything with George Castillo? They're just discussing at  
6 what price to do it at. That's rigging of market activity.  
7 That's illegal. That's artificially affecting the market, and  
8 that's exactly what she and Discala are discussing here, and  
9 they're on the same page. They're just talking about what  
10 price looks better from an optics standpoint.

11           Then if you look at the last portion of the call  
12 here, they're talking about what to pay the corrupt brokers,  
13 and Discala says, Goodrich is really helpful. You should pay  
14 him 50,000 shares at \$0.25 a share at almost nothing when the  
15 stock's trading at \$6.

16           And she says, 50 at 25? We were doing 25 at 25 with  
17 Glendale.

18           And you'll see that later that she, in fact, makes  
19 that payment to Glendale. They're on the same page. She's  
20 saying, What should we pay our corrupt brokers for their role  
21 in this scheme? And she's saying, Well, I'm paying 25,000  
22 shares at \$0.25 a share, that's what I'm selling those shares  
23 to, to the corrupt broker here, and I don't know about 50 at  
24 25.

25           And he said, No, no. Darren will be really helpful.

1 He'll help this scheme really take off.

2 And she says, Okay. All right. I'll work with him.

3 There's full understanding of what's going on  
4 between them, and they are working on how best to make this  
5 manipulation scheme work.

6 That's Overt Act I.

7 And during this whole period in May, what's  
8 happening? Kyleen Cane continues to sell out at David  
9 Ben-Bassat's -- her account under David Ben-Bassat's name at  
10 gradually increasing prices, just as you saw on the chart.  
11 May 12th: 5 35, 5 35, 5 37, 5 40, 5 42. She's selling at  
12 ascending prices, and the buys are at ascending prices to work  
13 the stock up, just like happened with CodeSmart, and that's  
14 what she's doing here in her role.

15 May 23rd, 2014, spiking Cubed's stock price. We've  
16 discussed this before; it's come up with several witnesses.  
17 And what you have seen and heard from the evidence is that  
18 there was an unsuspected spike in Cubed's stock on May 23rd,  
19 it had been going gradual, and it catches Kyleen Cane and AJ  
20 Discala off guard. And as you'll see in the calls and  
21 documents that we've gone over, it came about because their  
22 corrupt brokers working with them weren't at the desks  
23 carrying out the objectives of the conspiracy. George  
24 Castillo was on vacation, Darren Goodrich wasn't at his desk.

25 And so what did they do? They talk about rigging

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1 the price. Hey, let's get it down a little bit because it  
2 looks bad, it hurts our gradual increase of the price of the  
3 conspiracy if it spikes up like this. And why does it hurt  
4 it? Regulators might notice, you heard Bell testify to that,  
5 and we'll go through that a little bit, and then you'll see  
6 Kyleen Cane later talks about profit-takers. It's going to  
7 hurt your conspiracy. If your spike -- if your price spikes  
8 to that degree, people who own that stock might quickly sell  
9 out instead of holding it and enabling you to work your price  
10 up.

11 And so they continue to rig the price, they continue  
12 to bring it down, they bring it down for purposes of -- to be  
13 able to continue to increase it as part of their conspiracy.

14 Here is the spike I'm talking about. It's in the  
15 middle of this chart, 196-12. You saw it. It gradually was  
16 increasing, the price, and then all of a sudden that day,  
17 surprisingly it pops up. It pops up above \$7, they bring it  
18 back to 6 30, and then it continues to gradually go up from  
19 there.

20 Here's a call that Discala and Cane had on that day  
21 when they noticed a spike. It's Government Exhibit 198-28.

22 (Audio played.)

23 MR. HEIN: Right here, they're caught off guard by  
24 the spike in the price. What's telling about this call?  
25 First of all, Kyleen Cane is in control.

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1           Discala says to her, Just tell me what you want to  
2 do, and what would you like me to do here?

3           'Cause he knows that she's the one in control of the  
4 escrow, she's the one in control of the shares, she's selling  
5 them out.

6           And he says, How should we fix this? What would you  
7 like me to do?

8           And they talk about George Castillo's on vacation.

9           Discala says, I talked to John, Darren's assistant,  
10 because Darren Goodrich is on vacation -- and there's  
11 confusion about how this happened. She's following the stock  
12 price at seven and she's saying, It jumped there.

13           Because this is not following precisely the  
14 conspiracy scheme they put together because the people they're  
15 relying on as part of their conspiracy are out that day.

16           Discala says, This is my box, meaning the box he's  
17 looking at in terms of the price and what to do with it.

18           And she says, I'm going to call George right now.  
19 I'm going to call George Castillo and figure out what  
20 happened, to figure out what's the cause of this.

21           Here's the remainder of the call that they were on.

22           (Continued on following page.)  
23  
24  
25

1           MR. HEIN: Kyleen Cane says we need to keep it back  
2 down, we need to keep it back down. She says, I need to  
3 figure out what the F is going on here. Because she knows  
4 that this is hurting their manipulation scheme. She's not  
5 bringing the price down of wanting it to come back down for  
6 protection of the company. She wants it down for the  
7 protection of them, of their scheme, so they can carry this  
8 thing out. That's why she's calling George. She needs to see  
9 where do we get this price at to keep this thing going. She's  
10 artificially rigging a market. This is not what happens in  
11 normal market conditions with a stock. You don't have  
12 individuals who have this control. You're not permitted to  
13 execute this type of control over a stock to rig it. That's  
14 what they are doing now.

15           They are trying to figure out what George is going  
16 to say and what they can do. Why do they want to keep it  
17 down? I submit to you two reasons. The first is, it looks  
18 bad to regulators. You pop in a stock like this, a penny  
19 stock like this, and it jumps to \$5.07 that gets on people's  
20 radar screen. Matt Bell testified to that.

21           You see in the text message later we go through from  
22 Kyleen Cane, profit takers. It hurts the scheme because now  
23 people might want to get out. People who bought the stock  
24 might say I'm going to sell and get out. It hurt the scheme,  
25 that's why they want to drive it back down.



1           Here's what Matt Bell told you about a similar  
2 scenario with Code Smart. The stock jumped from \$4 to \$6 he  
3 testified to this on the first day of his testimony early on.  
4 He and AJ Discala said, oh, no, what is going on. We need to  
5 get that trade fixed. We asked him why would that create a  
6 big problem. He said, if your stock trades at \$4 and filles  
7 at \$4 and then to \$6, big jump, I have a 50 percent spike in  
8 the stock and I've got regulators, people whose job it is to  
9 crazy things to happen in the market. And so if any of my  
10 stocks spike up ten to 20 percent in a morning, my management  
11 team will get a report and then they are supposed to  
12 investigate. So we don't want that to happen. Why we don't  
13 want anyone to know what we're doing.

14           I submit to you that's a big part of the concern  
15 that Kyleen Cane and Discala had about the spike in the stock.  
16 After the call on May 23, she texts Marc Wexler and George  
17 Castillo, 129-43, about this issue. She says, yes, everyone  
18 is out on vacation it's what happens when no one is mining the  
19 store. George Castillo is not minding the store. She says  
20 they, she then writes George Castillo, call when you can.  
21 Sorry to disturb you. She wants to get this sorted out with  
22 him, so he takes the right step to get it back on track. She  
23 writes back to Wexler about the price, not bad but not great.  
24 Need to understand what happened first. Haven't been able to  
25 reach anybody. Wexler writes, understood. Not sure either we

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1 put up some bids just to protect it, until we get marching  
2 orders. She says, hopefully I'll get a call back soon from  
3 George Castillo. He says, okay, of course. Hoping we don't  
4 have to go down too fast. It's your call. We're with you.

5 Again, co-conspirators, what they are saying we  
6 would put bids just to protect it until we get your marching  
7 orders. That's not permitted. You can't put bids in to  
8 protect a stock price. That's artificial coordination,  
9 artificial control over a price. That's rigging the price to  
10 mislead investors.

11 She understands that. She said I'll get back to you  
12 soon let me talk to George Castillo. She needs the control.  
13 He says, it's your call. She writes both Wexler and Discala  
14 same day, it's coming back part way. It's coming back part  
15 way.

16 This is fraudulent intent. This is, hey, we're  
17 rigging this price back, we're getting it back to a spot where  
18 we want it. It's not permitted under the law.

19 Now, Cane and Discala, these text messages, they  
20 follow up on what is going on, 198-29.

21 (Audio played.)

22 She explains what George Castillo is going to do,  
23 he's going to get it back down to the sixes, she says, so it  
24 just doesn't jump so much. She's controlling the price. She  
25 doesn't want it to jump so much right back in the right place

1 to continue the inflation of the price.

2 (Audio played.)

3 Kyleen Cane says to Discala here, it's going to be  
4 yeah it's going to be sixes, it's still going to be 50 to 60  
5 cents, whatever it is, so, and everybody is going to be happy.

6 Again, artificial rigging, manipulation of price.

7 Then she asks Discala, where do you want it to land?  
8 Where do you want it to land? That's crystal clear. It's  
9 saying we're manipulating the stock price you tell me where  
10 you want it to land. I'll talk to George Castillo and we'll  
11 get that price there. He says 6.35 because people would get  
12 too excited, they would get too disappointed it went up. She  
13 says, all right, all right. I'll tell him.

14 This is a meeting of the minds, a discussion among  
15 co-conspirators about where this price should land, what looks  
16 best, optics, so we can keep this scheme going.

17 Then Discala, he informed Goodrich of what is  
18 happening on the same day, 198-30.

19 (Audio played.)

20 Discala is informing Goodrich of what is going on.  
21 They are going to retweek it to 6.35. And wants to make sure  
22 it never happens again. He mentions to him what the price is  
23 around 6.2. He's asking Goodrich to help with the box again  
24 for optics purposes. He tells him, I'm going to talk to  
25 Kyleen and make sure we get you the 50,000 shares for 25 cents

1 a share.

2 Kyleen Cane, the same day, she writes George  
3 Castillo, have a nice weekend, sorry to bother you. She's in  
4 touch with him to make sure they get the price back down to a  
5 spot where they want it.

6 Here Discala, 198-31, he informs Azrak of what is  
7 going on.

8 (Audio played.)

9 So Discala is informing Azrak of what happened and  
10 how they are going to fix it. He said, I can't have that.  
11 I've got news coming Tuesday. It will jump, it will go. So  
12 what he's saying is we're going to get it back down, but don't  
13 worry next Tuesday I'll get news and get this price going up  
14 again as part of our scheme.

15 Then look what he says to him about what happened.  
16 It was a mistake, right, George or Glend let's call him Jotta.  
17 Discala doesn't want to use his real name, a nickname, why,  
18 because he's a corrupt broker. He's a part of scheme so let's  
19 give him a nickname to conceal the fact that George is from  
20 Glendale. Let's call him Jotta as part of this.

21 He says he was on a plane, right, it got hit. It  
22 went through him. BMAC got hit. I had to lift the left side.  
23 Then Jotta landed, talk to Kyleen, we don't want this. We  
24 wanted 6.35 today, 6.30, something like that, then we'll let  
25 news rip it up next week. That's the news, again, get it back

1 up. He says to Azrak 6.30, 6.35 something like that. He  
2 doesn't care whether it's 6.30 or 6.35, he wants it in that  
3 vicinity. That's where he wants the price. That's what  
4 Kyleen Cane and him discussed about getting there, and then  
5 let's rip news right after that and get the stock price back.

6 Wexler writes Kyleen Cane that day. I know. Back  
7 down. I hope it stops somewhere soon getting tremendous calls  
8 and texts. Maybe now with some news we'll have some real  
9 holders.

10 What does he mean by that, hey, if you get us press  
11 releases, news out there, promotion, we'll get some real  
12 holders. That's important to this scheme, eventually get some  
13 people who want to stick with the stock, people  
14 non-conspirators, holders to stick with the stock and allow us  
15 to work this up and take their money. He needs press releases  
16 to do so. Here, a call between Kyleen Cane and Discala later  
17 that day.

18 (Audio played.)

19 These are the co-conspirators, Discala is on the  
20 phone with Wexler. Hi, Kyleen. I'm on with Marc Wexler.  
21 We're trying to talk about where to get the price. I don't  
22 want on the five left side, I need it in the sixes, optics.  
23 He says 5.36, everybody else is 620, 620, 615. She says,  
24 okay, yeah I'll call him right now. Before she picks up he  
25 says, you know can you go, can you go, can you go 6, can you

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1 go 6.27 for 200, I'll go 6.28. That's Marc Wexler right at  
2 the beginning. These are the co-conspirators discussing the  
3 price and what to do with it. And she doesn't question. She  
4 doesn't question about rigging prices. She's, like, okay,  
5 I'll call them. Let's get this going.

6 Look at where we end up on May 23. She sells, look  
7 at the David Ben-Bassat account, 3600 shares through George  
8 Castillo for \$6.297, 6.30, that's what she says, that's just  
9 as what she and Discala had discussed. He discussed 6.35 then  
10 he said I'm looking 6.30, 6.35 somewhere in that realm, that's  
11 where she landed. She's fulfilling her part of the conspiracy  
12 here.

13 Now, more Tuesday. This is the text Kylene Cane  
14 responds to Wexler when he says maybe now with some news we'll  
15 have some real holders. She says, I'll get you some news on  
16 Tuesday, just as Discala had talked about as well. We just  
17 need some news. Here is the closing price, popped over seven,  
18 closing price of the stock \$6.30. Just where they had  
19 discussed getting that stock at, to rig it back down to  
20 continue their manipulation.

21 They continue their coordinated trades and their  
22 manipulation after May 23, end of May into June. Here is a  
23 call, Overt Act K, Discala and Cane have on May 27, 198-34.

24 (Audio played.)

25 They are talking about the dollar amount. You heard

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1 from certain victims, you heard from certain investors they  
2 were buying a dollar a share, restricted shares, but shares  
3 that they thought were worth six times that and eventually  
4 would be able to sell. They are discussing bringing more  
5 investors in. Investors who think this is a good company, who  
6 they promoted to and who gets swindled. Let's continue the  
7 call.

8 (Audio played.)

9 So what they are talking about here, she mentions  
10 press releases. She says I'm getting something out today.  
11 This is 27th, Tuesday, 23rd was Friday, so 26th must have been  
12 Memorial Day weekend. Here is the new trading day. She's  
13 providing news. I'm getting my PR guys out there.

14 That's part of the scheme she would have provide the  
15 news and then they would use that to get the stock price up.  
16 Discala is talking about optics again. He's talking about  
17 where to move the price and she understands exactly what he's  
18 talking about.

19 On May 27 Wexler writes Kyleen Cane, Kyleen, can we  
20 just ease into 6.35? We have some buying. She says okay. He  
21 asks is everything still on track? She says, yes, call me.  
22 No text. She's agreeing with him. I'll ease you into 6.35,  
23 let's discuss this on the phone, no text. I don't want any  
24 record of this.

25 Here on May 27, the Ben-Bassat account, sells at

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1 6.325 above the 6.30, easing into 6.35 just as she agreed with  
2 Wexler. After close on May 27 she calls David Ben-Bassat and  
3 he puts a trade in with George Castillo and Glendale. Here is  
4 that trading on the next day, May 28 at 6.41, working the  
5 price up, using Ben-Bassat as a cover up. Communicating with  
6 him and having him put the trades up and the price is going up  
7 again. Got back 6.30, she puts it in, 6.32. May 28, 6.41  
8 they are climbing again, just as they planned.

9           You saw on May 27 Cane put out press to help Discala  
10 and their co-conspirators to promote the stock. This is a  
11 important part of the scheme, just as Code Smart.

12           May 29, 2014, they also talk about putting news out  
13 in furtherance of the conspiracy. Would you guys consider  
14 letting me run press, I've done it before. Then he says, oh,  
15 I just saw it. Wexler really wants the press out. He said it  
16 on the stand, he testified to it, he wants it all to move  
17 faster than Kyleen Cane, who knows the rhythm she wants to  
18 move at, she knows how this will be a success. But then he  
19 sees the price after he writes her. She writes, Kurt Divich,  
20 the new PR guy, he delivers just before market opens. No need  
21 to look two hours before. It was scheduled last time for this  
22 time. All really good. She is saying, I got a new guy, he'll  
23 get it just before market opens so you can work it to work the  
24 price up that day. She's agreeing to, that's what she's  
25 doing.



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1           Here on May 29 continuing to sell, gradually  
2           increase in prices. Also on May 29 Wexler writes to her, he's  
3           wondering who is on the bid, can it be like MMS is trying to  
4           break it down or short us? And seeing if they can break it.  
5           She says profit taking, moved up too fast. This is why she  
6           was concerned about that huge spike. We need it back down.  
7           We need it back down, because she knows how these schemes  
8           work. When you work that price up, you can't have people jump  
9           in there and sell. They see this huge spike. That's why she  
10          was concerned, that's why she wanted it back down.

11                 June 3rd, Discala is on another call with Cane.  
12          They continue to discuss rigging the price and rigging the  
13          volume of the stock.

14                 (Audio played.)

15                 Crystal clear evidence of intent on both parties,  
16          both of them are talking about rigging prices, rigging volume.  
17          He's giving his view how the optics look and what is best.  
18          Kyleen Cane is saying, well, actually the guys who promoted  
19          asked to keep it at certain levels, not, not shoot it up.  
20          We're moving it up pretty high. They are describing their  
21          manipulation scheme, what it's doing to the stock price.  
22          She's saying move it up a little higher, talking to the  
23          promoters, other co-conspirators, they are saying we don't  
24          want to shoot up.

25                 (Audio played.)

SUMMATION - MR. HEIN

3589

1 Again, crystal clear what they are doing here. He's  
2 talking about IRPR guys. He's saying I completely agree with  
3 you, I just need to get my horses some hay. He needs to get  
4 his horses some news, his promoters some news, to work the  
5 price up. He asked about the news. She said, I got something  
6 out today. I'm going to twice a week. That's exactly what  
7 she's doing here, they are working together to work the price  
8 up. That's June 3rd.

9 What else happens on June 3rd? This is 198-41 Cane  
10 transfers \$300,000 in Cubed trading profits to her own account  
11 from the Ben-Bassat account. This is the money that she's  
12 extracting from the scheme. Here on the left you have it,  
13 \$300,000 Ben-Bassat signs it June 3rd. On the right we asked  
14 Ben-Bassat about the transfer. Did you wire 300,000 to  
15 yourself, sir? No. Who was using this bank account that was  
16 sent to? Kyleen Cane. Did you use any of these 3,000. No.  
17 Did you know about this June 3rd wire before you met with the  
18 Government. No, I did not.

19 Those are the proceeds that she has made from her  
20 manipulation from her sale of the stock unbeknownst of  
21 Ben-Bassat, she's transferring it over to her account. That's  
22 intent. That's evidence of intent of her being part of this  
23 scheme and profiting from it illegally.

24 June 7, four days later, you heard about Andy  
25 McAlpine, a broker down in Cayman Islands. You saw text

SUMMATION - MR. HEIN

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1 messages between McAlpine and Kyleen Cane. What did he write  
2 to her about Cubed stock, that stock is creeping up. She  
3 gives him a smiley face. That's exactly right, that's what  
4 I'm doing with the stock, creep it up to take advantage of it.  
5 He says, you have a million shares, wasn't it. She says,  
6 first deposit will be 270, but there will be two more, those  
7 are the escrow accounts.

8           The first deposit of the Ben-Bassat shares to trade  
9 at 267,000 but there will be two more she said. She's going  
10 to work her way down the tranches of fake shareholders to put  
11 them in, to sell, to drive the price up.

12           On June 12 Discala and Josephberg talk.

13           (Audio played.)

14           Government's Exhibit 198-51, who is control of the  
15 scheme, Kyleen Cane because she controls the shares.  
16 Josephberg, the corrupt broker, says call Kyleen Cane, she's  
17 the person you need to talk to if you have questions about  
18 this.

19           June 12, this is Count Ten, another wire fraud count  
20 in furtherance of the conspiracy.

21           (Audio played.)

22           What is going on here with discussing Wexler's  
23 conversation with Kyleen Cane. First of all, she's the one in  
24 control. She's saying back off, I got this, I'm handling it.  
25 When she said that, Discala says, that's beautiful. Why is

SUMMATION - MR. HEIN

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1 that beautiful? Because he trusts her. He knows that she has  
2 experience and expertise in how to make this thing work.  
3 Wexler is pushing hard. He wants more and more volume. She's  
4 saying the company has got to the catch up with the stock  
5 price. Meaning, to make this thing work, you got to walk it  
6 up. You can't just go spike it up, like Wexler wants and make  
7 your money. You got to stay under the radar, stay under the  
8 regulators, work the price up to continue to profit. And look  
9 what she made all right, 300 grand she just extracted. She's  
10 got a million restricted shares.

11 You get this conspiracy to go out for a year and  
12 those restricted shares become freely tradeable. And you're  
13 trading in the high, single digits or ten bucks, wherever you  
14 get that thing to. You sell those for \$10 million, that's  
15 certainly a lot more profit than the 300,000 she made so far.  
16 She's saying, I got it, we're pushing forward. This is in  
17 furtherance of the fraudulent scheme. She continues to be  
18 pushing the sales.

19 June, here are the sales, increasing prices. 6.60,  
20 6.63, 6.71, 6.70, 6.70. She's pushing up, as she said  
21 earlier, I don't want it to jump too quickly. She's talking  
22 to the promoters, you got to do this the right way, got to get  
23 this thing going gradually to get the most out of this  
24 manipulation scheme.

25 How else is she pushing forward? June 20, she

SUMMATION - MR. HEIN

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1 prepares the Marche Godffrey shares for sale. Marche Godffrey  
2 you heard from him testifying before. No idea about the  
3 shares. She controls them. Now she's getting that second  
4 tranche ready for sale.

5 Here you see it. Marche Godffrey on 6/20 they go  
6 into the Cede & Co. and then they go to JP Morgan Clearing  
7 Services. She is getting the next tranche ready for sale to  
8 continue to get the price up of Cubed, just as she told Andy  
9 McAlpine in the texts, I got 270 already, two more in their  
10 way, and here is one of them, JP Morgan Clearing Services.

11 Look at the documents. Here is the irrevocable  
12 stock power. What does Marche Godffrey tell you? He told you  
13 I filled my name on the top of this, but nothing else. They  
14 took it from me. Now what is she doing, she's transferring  
15 his shares to Oxbridge Technology Partners. You saw them  
16 earlier. They were when Wexler and Discala bought the escrow  
17 and said your money is going to go to Oxbridge Technology,  
18 down in Belize, Kyleen Cane's company. That's what these  
19 shares she's sending. Did Marche Godffrey know? Did he sign  
20 off on his shares, which by the way 267,000 shares are worth  
21 maybe \$1.3 million, that they are going off to be traded, no,  
22 he didn't know. Signature, what does he say, that's not my  
23 signature. Someone forged that signature, Kyleen Cane and her  
24 team forged that signature. How do you know that? He said  
25 that because I have an E at the end and an accent on Marche,

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1 There is no E at the end. This is nothing like the signature  
2 he signed in the subscription or the non-prosecution agreement  
3 that he signed. Kyleen Cane and her team are forging the  
4 signature to transfer these shares so she can profit from the  
5 sale of them, just as she did with David Ben-Bassat's shares.

6 Here are the records Oxbridge Technology Partners,  
7 from Belize City, Belize. This is to Empire Stock Transfer  
8 saying Marche Godffrey holds these shares, putting them in to  
9 JP Morgan Chase enable willing them to be traded as free  
10 trading shares. Cane Clark Cubed walking in, picking up the  
11 Marche Godffrey stock certificate from Empire and putting them  
12 in Cede & Co. to make them tradeable.

13 What you also saw from those JP Morgan records from  
14 the witness you saw here, Government 165-26 through 27 is that  
15 Cane did in fact, sell 500 of those Marche Godffrey shares on  
16 July 15, 2014, just before she was arrested. She's profiting  
17 from those shares. While she's profiting from her trading she  
18 is still trying to keep the escrow account under wraps. Here  
19 is the call with Discala, 198-60, on June 24.

20 (Audio played.)

21 Kyleen Cane says to him, he called me, he's asking  
22 scary questions about the escrow. She doesn't want anybody  
23 calling her about the escrow and asking her how it works.  
24 It's her illegal scheme. It's the special scheme that makes  
25 this work. And she said, tell Kenny Yellin not to call me.

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1 Nobody should be calling me how their shares are split. Just  
2 as he said about Goodrich, she doesn't want to talk about the  
3 escrow. That continues here.

4 What else is news, Kyleen Cane continues to sell  
5 into the buying, into the rigging trading of Cubed through  
6 June.

7 What else does she do at the end of June? June 27  
8 she transferred Cubed shares to GCEF Opportunity Fund. What  
9 is the GCEF Opportunity Fund, a fund in connection with a  
10 principal of Glendale. This is Glendale where George Castillo  
11 works. This is now as she's talking about she's giving him  
12 those \$25,000 for 25 cents on the share.

13 Marcus Poe, remember Marcus Poe another fake  
14 shareholder on the 30 fake shareholders list, another person  
15 she controls. Here she goes the Empire Stock Transfer and  
16 25,000 shares she transfers to GGCEF Opportunity Fund. Marcus  
17 Poe, and there I submit to you is the forged signature. So  
18 she continued to commit fraud with these fake shareholders'  
19 stock.

20 Here Ken Clark picks them up and here is the  
21 November check for the GGCEF Opportunity Fund \$6,250 for  
22 25,000 shares. It says it there in the memo, 25,000 Cubed  
23 shares. This is signed by an individual named Paul Eric  
24 Flushing, principal of Glendale Securities, George Castillo  
25 her co-conspirator. These free trading shares that she's

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1 providing, worth about \$150,000, the stock price of \$6 per  
2 share, Glendale paid 6,000 for them. That's what they are  
3 getting as being part of this corrupt scheme from these fake  
4 shareholders.

5           What else did she do July 1st? She transferred  
6 another 225,000 in Cubed trading profits to her account. Just  
7 as before, Ben-Bassat's signature is forged, \$225,000. We  
8 asked Ben-Bassat, is that the account that you shared with the  
9 defendant Kyleen Cane? I believe so. Sir, did you give  
10 permission to wire \$225,000 to the Glendale account to this  
11 account that was being used by the defendant Kyleen Cane? No.  
12 That's \$525,000 she's moved into her account as profits from  
13 her scheme. She continues to cash out.

14           What happened else does she do here? July 15, two  
15 days before her arrest, she receives 300,000 free trading  
16 shares from Cubed. This is purportedly for her legal work for  
17 Cubed and Cubed signed off on this paying her one dollar per  
18 share for her work that was going to continue, so for 300,000  
19 shares that she was getting from them in Cubed. The stock  
20 price of six almost \$7, again, 300,000 shares worked out to  
21 about \$1.8 million shares that she can trade on the market  
22 that she has now in her name.

23           Where does she send these shares? She immediately  
24 that same day she goes to Empire Transfer and said please  
25 transfer my 300,000 free trading shares in the name of NPNC



1 Management, her company, to conceal her activity. She signs  
2 her name at the bottom. She immediately is moving to get  
3 these things to be tradeable so she can sell them for profit  
4 two days before her arrest.

5 As I said in the beginning of this, all profits  
6 Cubed investors expense.

7 Here is the money she made from the Ben-Bassat  
8 account, \$570,000 is what was made in that account. As you  
9 saw, she transferred over \$525,000. What else did she profit  
10 from this scheme? \$300,000 free trading shares. I just  
11 showed you that she immediately moved to try to trade two days  
12 before her arrest.

13 What else did she profit? If she keeps this scheme  
14 going, as she's trying to do, 1 million restricted shares in  
15 NPNC Management that she bought from a fake CEO of Northwest  
16 Resources, Taylor Edgerton. Again, stock that she could sell  
17 when she keeps this scheme going.

18 At who's expense is Kyleen Cane profiting? Victims.  
19 You heard from several of them. Rui Falcon, told you that she  
20 invested 600,000 of her own money, total of 1.4 million in  
21 Cubed. She told you she had a sit-down meeting with Kyleen  
22 Cane to discuss the company, and was told that this company  
23 was something worth investing, that it was something that she  
24 would profit from and had this great technology. She relied  
25 on that. She believed in that. So she invested \$1.4 million

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1 because she was getting shares, 1 dollar a share, the company  
2 was trading at \$6 a share. She was told this company has got  
3 a great product, great prospects, it's moving up, you should  
4 invest here. And she did.

5 What else did she tell you? She said it would have  
6 been material, it would have been very important for her to  
7 know if someone held more than 5 percent of the stock; if one  
8 person, Kyleen Cane, held all of the free trading shares.  
9 Why? Because that someone has control over it and they can do  
10 things in that stock you can't do in a normal market  
11 conditions. She said if she had known this she would have run  
12 as fast away from the company as possible and reported them to  
13 the authorities.

14 Eliezer Zupnick, you heard him testify. He told you  
15 that Josephberg introduced him to Discala at a meeting, who  
16 talked up these companies. He invested \$10,000 in Cubed  
17 through a stock purchase agreement with Discala. He never got  
18 those shares, despite what it said in the agreement. AJ  
19 Discala never gave him the stock certificate. He lost that  
20 money.

21 He also invested five grand in Star Stream, lost  
22 that; 2500 in Code Smart. He lost more than \$66,000 as a  
23 result of AJ Discala and Kyleen Cane's manipulative  
24 conspiracy.

25 Igor Gefter, he lost \$55,000 in Crackpot Cubed. He

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1 invested in the Cane Clark escrow account. He invested with  
2 Omni View he. Invested 5,000 in the open market. He lost it  
3 all as a result of the fraudulent scheme the defendant the  
4 perpetrated.

5 Bryan Hagen, he told you also about losing \$40,000  
6 in Cubed. AJ Discala signed purchase agreements.

7 (Continued following page.)

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1 MR. HEIN: Igor Gefter invested \$40,000 in Cubed.  
2 He thought this was going to be a life-changing investment  
3 because of where it was trading and what he was hearing about  
4 the company.

5 He lost 38,000 of those \$40,000. He also lost \$7500  
6 in StarStream because of his investment.

7 And you heard from Michael Kellner, who lost \$43,000  
8 in Cubed. And he told you about Chris Meyers, a promoter for  
9 AJ Discala, who was a close friend of his, and Michael Kellner  
10 had gotten his grandfather's inheritance and wanted to invest  
11 it in something. And they misled him into investing it in  
12 Cubed. Forty thousand dollars, he invested. AJ Discala  
13 signed the stock purchase agreements and he never got a stock  
14 certificate. He never got those shares and he lost all that  
15 money.

16 Here's what Bryan Hagen told you: Mr. Hagen, would  
17 you have purchased stock, Cubed stock from OmniView if you  
18 knew that OmniView would not give you a stock certificate? Of  
19 course not.

20 Why not? Our agreement that we signed clearly  
21 stated that they would deliver the stock certificates.

22 Mr. Hagen, is the loss 52,400 get get? Absolutely.

23 How? This represents a very significant amount of  
24 money to our family. I mean that amount of money could have  
25 potentially funded one of our kid's college fund, you know,

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1 from a personal standpoint, obviously caused stress in the  
2 household, stress on my marriage. Obviously, I don't believe  
3 we've made any investments since that weren't retirement  
4 savings.

5 Was this a large part of your savings, sir?

6 Absolutely.

7 What did Michael Kellner tell you: 1870 in the  
8 transcript: Would it have been important to your decision to  
9 know that Cubed's stock price was being artificially inflated?  
10 That would be very important to know?

11 Why? Because I put my money in the hands of  
12 criminals and scoundrels.

13 What kind of financial impact did losing  
14 approximately \$46,000 have on you and you family? It was big.  
15 It was my life savings and if I had that money now and maybe  
16 returns from other investments, I could probably afford a new  
17 car, which I need. I could probably afford to send my kid to  
18 daycare, which I can't do right now.

19 Those are only certain victims of these schemes that  
20 these two defendants perpetrated.

21 And I told you at the beginning I'd come back to the  
22 charges. Here are the charges that are laid out, the ten  
23 counts. And I want to walk briefly through the law you'll get  
24 and explain what we've proven within a reason doubt defendants  
25 are guilty of all of the charges in the indictment.

SUMMATION - MR. HEIN

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1 Securities fraud: As I said, they have been charged  
2 with a securities fraud conspiracy. Both defendants have been  
3 charges. AJ Discala with the conspiracy to defraud investors  
4 in CodeSmart, StarStream, Staffing Group and Cubed. In that  
5 same conspiracy, Kyleen Cane is charged with defrauding  
6 investors in Cubed.

7 Counts Three and Four also charge securities fraud,  
8 but not a conspiracy. They are substantive counts, is what we  
9 would call them, three with respect to CodeSmart, four for  
10 Cubed.

11 Here are the element of securities fraud: First, in  
12 connection with the purchase or sale of a security, CodeSmart,  
13 Cubed and Staffing Group and StarStream, a security owned  
14 shares of those companies. The defendants employed a device,  
15 scheme or artifice to defraud -- which I explained to you  
16 earlier is a fraudulent scheme -- a scheme to deceive or take  
17 advantage of investors through lies and false representations.  
18 That's one.

19 Four, made an untrue statement of a material fact or  
20 omitted to state a material fact necessary in order to make a  
21 statement made in light of circumstances of which they are  
22 made, not misleading or engage in an act, practice or course  
23 of business that operated or could operate as a fraud or  
24 deceit upon the purchaser or seller.

25 Now, all three of those you see here: One, device,

1 scheme or artifice to defraud, the fraudulent scheme, I've  
2 gone through the evidence on, that these two individuals,  
3 these two defendants perpetrated. To lie and deceive  
4 investors by not telling them they were manipulating the  
5 stocks.

6 Number two, you've seen, basically  
7 misrepresentations, material misrepresentations that people  
8 rely on. You've seen the false press releases for CodeSmart  
9 the false SEC Filings. They lied about exclusive partnership.  
10 These are things that investors look to.

11 And in the third scheme we described to you also are  
12 acts, practice or course of business that operated as a fraud  
13 upon a purchaser or a seller. The act or practice is the  
14 fraudulent scheme. It is the rigging of the prices to move  
15 them up for your own profit.

16 The second element of securities fraud, defendants  
17 acted willfully, knowingly with an intent to defraud. And I  
18 submit to you, we've proved this with overwhelming evidence  
19 that these two defendants knew exactly what they were doing,  
20 and intended to defraud investors. And they intended to do  
21 that by rigging these prices, walking them up, selling their  
22 shares into them for shares that they got essentially nothing,  
23 and made massive profits while their victims lost that money  
24 when the stock price collapsed.

25 And you see intent. You see it in words. You see

1 it in wiretap calls. You see it in text messages, the  
2 Bell/Discala text messages. You see the wiretap calls with AJ  
3 Discala. You see it in emails.

4 And you see it in actions. You see it in placing  
5 trades, in placing sales and placing buys, in moving money  
6 into different accounts to profit from this. Those are the  
7 actions they took to intend to commit this fraud.

8 And finally, defendants knowingly used or caused to  
9 be used any means or instrumentality of transportation or  
10 communication in interstate commerce. What that means, wire,  
11 telephone calls, emails, text messages -- all of that  
12 satisfies that last -- you saw those in droves, a number of  
13 calls and texts and emails that were sent for perpetrating  
14 this fraud.

15 I submit to you that these securities fraud elements  
16 have all been met by the evidence you've seen with respect to  
17 both defendants.

18 Now, conspiracy. I mentioned to you that securities  
19 fraud is Counts Three and Four. And Count One, what we talked  
20 about is securities fraud conspiracy. That is Count One and  
21 two are charged that way. Conspiracy is simply an agreement  
22 with two or more people to violate the law.

23 And in each instance, AJ Discala and Kyleen Cane,  
24 they were in a conspiracy together with respect to Cubed.  
25 Kyleen Cane joined an ongoing conspiracy that Discala was part



1 of. He was part of a conspiracy to manipulate CodeSmart,  
2 StarStream, Staffing Group and Cubed -- and he had many  
3 conspirators, and you heard from several op the stand. And  
4 Kyleen Cane joined that conspiracy with respect to Cubed to  
5 carry out that manipulation with her special escrow account.

6 So the elements of the conspiracy existed and the  
7 defendants knowingly and intentionally joined that conspiracy.  
8 And you've seen evidence throughout showing the knowing  
9 joining of a conspiracy.

10 Discala texts Bell: We're a good them. We're going  
11 to do well for each other. That's a promise. Discala and  
12 Cane, Discala says: There's no crime. We're a team. I think  
13 it's wonderful. You should take the credit that's in  
14 Government Exhibit 189-23.

15 And Cane in that same call saying: I'll just tell  
16 them, you know, it's part of a team. When they're part of  
17 this conspiracy, they're part of this team.

18 And another call, 198-347: I'm doing this as part  
19 of our group effort. They're conspiring to carry this out.

20 And you heard Discala say to Goodrich in a call,  
21 198-6, that: There are really five escrows out there. Once  
22 you get face-to-face with Cane, she'll explain it to you and  
23 you'll be part of that team.

24 Now, I mentioned to you Count One and Two are  
25 conspiracy. Securities fraud conspiracy, Count One; wire

1 fraud mail fraud conspiracy, Count Two.

2 For a securities fraud conspiracy, we're also  
3 required to prove the defendants or one of their  
4 co-conspirators committed one or more overt acts to further  
5 the object of the conspiracy, and I've been pointing those out  
6 to you throughout, but I want to go through them briefly with  
7 you again now.

8 There are thirteen of them. The ones that are in  
9 black, I've already gone through. I will show you some in  
10 blue that I have not gone through, and I will show you  
11 briefly.

12 You recall this is the email from Ira Shapiro,  
13 Ramapo, apologizing for the false press release, essentially  
14 to keep thing under wraps to further the conspiracy,  
15 Government Exhibit 181-1.

16 Here's Government Exhibit 178-40. This is the stock  
17 purchase agreement on August 15th with one of Bell's clients,  
18 the one they sold at 14 cents a share as hush money, that  
19 Discala signed and Bell and Discala together participated in  
20 to further that conspiracy.

21 This is the August 27th date, Form 10, regarding  
22 Shapiro's stock purchase, basically putting out a false press  
23 release saying that he had bought \$80,000 of stock in the  
24 company because it is symbolic of his confidence, when, in  
25 fact, he didn't put that money. Discala give him that money

1 to try to further the ultimate scheme.

2 Overt Act D -- and by the way, you'll see these in  
3 the charge that the judge will read to you at the end. You  
4 will recognize it then.

5 This is Government Exhibit 198-3. It's a May 5th  
6 call between Discala and Goodrich regarding Cubed: Rigging  
7 the spread together, moving the price up. That's also in  
8 furtherance.

9 198-13E, you saw this. This is the May 12th call  
10 between Discala and Azrak about the bulls and the calves,  
11 taking advantage of the speculativeness. Again, furthering  
12 the object of the conspiracy, to swindle investors.

13 This one's in blue. I'll go through that in a  
14 second. G, we played for you May 20th, 198-20, a call between  
15 Discala and Goodrich regarding the escrow on Cubed, talking  
16 about the escrow, wanting to meet with Kyleen Cane and  
17 manipulating Cubed.

18 H198-21, may 20th call between Discala and Azrak  
19 regarding the break and the gas. Discala tells him both the  
20 break and the gas. A call in furtherance of the object of the  
21 conspiracy, manipulating Cubed.

22 Here's 198-23, May 21st, between Discala and Cane  
23 regarding Cane's IRP, her investor relations, public relations  
24 guy, the guy she's going to help get the word out there, put  
25 press releases out there, furthering the scheme.

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1 J -- we'll go to that in a second. I'm not  
2 showing -- K198-34, May 27th call between Discala and Cane  
3 regarding a trade of Cubed shares. Again, talking about  
4 rigging the price, rigging the volume, walking the price up.  
5 These last two, I'll go through in a second.

6 I submit to you that all these overt acts that  
7 you've seen them played through were in furtherance of  
8 securities fraud conspiracy.

9 Here are the four that I have not played for you.  
10 Overt Act F, it's Government Exhibit 198-17, Discala said to  
11 Wexler in a call: So our deal is going to pay Cubed 250  
12 'cause these guys can't generate revenue, so I'm going to  
13 generate it myself.

14 And here, he's talking about generating revenue for  
15 Cubed, make it look a little better for the company, so they  
16 can continue to push the stock price up.

17 Overt Act J, 198-24, Joseph Brooks to Discala: I  
18 don't want to be the only one buying today. I heard it looks  
19 very bad for a broker to be the only one buying, that's what  
20 I've heard.

21 That is a call in furtherance of the conspiracy, and  
22 there's more to the call, obviously. But what he is saying  
23 here is hey, you're asking me to be a corrupt broker here, do  
24 some buys, and I'm a little concerned it's going to look bad  
25 if I'm the only one buying.

SUMMATION - MR. HEIN

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1 Overt Act L, Government Exhibit 198-35. Discala to  
2 Darren Goodrich on May 29th: No. Just buy a hundred and stay  
3 under 43. I'll have the other accounts move up. Again, an  
4 instruction to buy, manipulating the price, another overt act.

5 Overt Act M, Government Exhibit 198-49, Wexler  
6 states to Discala, June 6th: We don't need to go up every  
7 F'ing day. The bottom line is though, we are supporting the  
8 stock.

9 There, Wexler's talking to Discala about how he and  
10 Discala are the ones on the buy side of the stock. They're  
11 supporting it. They are rigging it. They're making it go up.  
12 Kyleen Cane is selling the stock.

13 I submit to you that we have shown overwhelming  
14 evidence proving these overt acts and these overt acts were in  
15 furtherance of the securities fraud conspiracy, to defraud  
16 investors in connection with the sale of the stock in these  
17 companies.

18 Here are the charges: Securities fraud conspiracy,  
19 securities fraud, securities fraud. As I said, those are the  
20 elements that we needed to prove, and this evidence is proved.  
21 It proved that Discala and Cane participated with this  
22 conspiracy, agreed to defraud investors with respect to these  
23 companies.

24 And that on Counts Three, Discala is guilty of  
25 securities fraud for defrauding investors by manipulating the

1 price of CodeSmart; and that Count Four, Discala and Cane are  
2 guilty of defrauding investors with respect to CodeSmart by  
3 knowingly carrying out this scheme to defraud and using wires  
4 and calls and text messages to carry it out.

5 Now, wire fraud and mail fraud. Count Two is  
6 charged as wire and mail fraud conspiracy. So I want to walk  
7 just quickly through what constitutes wire fraud and mail  
8 fraud.

9 First, the scheme or artifice to defraud, obtain  
10 money by false and fraudulent pretenses, representations or  
11 promises. As you notice, some of that language is identical  
12 to the language in the first element of securities fraud: A  
13 scheme or artifice to defraud. Just in this case, wire fraud,  
14 it doesn't need to in connection with the purchase or sale of  
15 a security.

16 This is the same scheme that we're talking about,  
17 the scheme that Discala undertook CodeSmart, Staffing Group,  
18 StarStream and Cubed, in the scheme, the conspiracy that  
19 Kyleen Cane joined.

20 Second, that they knowingly and willfully  
21 participated in this, very similar to the second element of  
22 securities fraud, is that they knew what they were doing, they  
23 intended to do this -- and third, for wire fraud, the  
24 defendants used or caused the use of interstate wires.  
25 Interstate wires, as I said to you before, are phone calls,

1 text messages, emails. And for mail fraud, the defendant used  
2 or caused to use the interstate mail to further this scheme.

3 Now, as for the mail fraud, you heard from -- Bell  
4 testifying that he had received via FedEx paperwork from  
5 Discala to buy CodeSmart shares and CodeSmart stock  
6 certificates from Goepel. That satisfies the mail fraud part,  
7 using the mail to carry out this fraud. And Eliezer Zupnick  
8 also received CodeSmart shares in Brooklyn, related to this  
9 wire fraud.

10 Now, wire fraud is also the last six counts, Counts  
11 Five through Ten, and you heard all of those calls. We went  
12 through them. I pointed it out to you. And as I mentioned  
13 throughout and the judge will tell you that each individual  
14 wire, I mean each call is a separate crime, and it's made in  
15 furtherance of a fraudulent scheme, and all of those calls, I  
16 submit to you, made in furtherance of the fraudulent scheme.

17 And I wanted to also note the venue. Venue is  
18 something that we need to prove. That simply means that it  
19 happened here in the Eastern District of New York. Each of  
20 those wire fraud calls took place while Discala was here in  
21 Brooklyn, which gives the Eastern District of New York venue  
22 over those crimes.

23 Also, from a venue perspective for securities fraud,  
24 you heard from the DTC witness, Deposit Trust Corporation,  
25 that all the trades from those four companies were processed

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1 here in the DTC from Brooklyn, as well, from a venue  
2 perspective.

3 Now, conspiracy, I'm going to go through it just  
4 briefly again for the wire and mail fraud conspiracy. Again,  
5 joining a conspiracy, knowingly and intentionally joining that  
6 conspiracy to carry it out, and I went through examples of  
7 that.

8 So here, we have wire fraud, mail fraud conspiracy.  
9 Discala and Cane are guilty of that, as well, because they  
10 defrauded investors knowingly and using both the wires and  
11 mail fraud and the mails.

12 And as to the wires, you heard them. Count Five is  
13 Government Exhibit 198-6. I'm not going to play them all for  
14 you again now. That's a call between AJ Discala and Darren  
15 Goodrich regarding the Cubed manipulation.

16 Count Six, 198-9, a call between AJ Discala and  
17 Sloan regarding the Cubed manipulation.

18 Count Seven, 198-74, Discala and Azrak regarding  
19 manipulating both StarStream and Cubed.

20 Count Eight, Discala and John Arlo from BMAC talking  
21 about the manipulation of SSCT. That's 198-52.

22 And Count Nine, 198-77 is Josephberg and Discala  
23 talking about manipulating SSET.

24 And finally, 198-53 is Discala and Wexler regarding  
25 Cubed.



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1           And you see that here for Count Five, manipulating  
2 customers involves Cubed, Six as well. Seven is both  
3 StarStream and Cubed. Eight and Nine, StarStream, those are  
4 those calls you heard -- and Ten is Cubed. And I submit to  
5 you each, one of those was in furtherance of the fraudulent  
6 scheme.

7           I know it's been a long presentation and I  
8 appreciate your patience.

9           Ladies and gentlemen, this case is about control and  
10 deception. The defendants, Abraxas Discala and Kyleen Cane,  
11 artificially controlled the price of these companies. They  
12 deceived investors by not telling them that they were  
13 manipulating the stock of these companies, and they made huge  
14 profits from these schemes.

15           And you heard what happened to these investors  
16 because of the defendants' fraud. They lost their hard-earned  
17 money, money they could have used for their children's college  
18 education, money that they could have used for -- to pay for  
19 daycare for their children.

20           The evidence we presented to you today proves beyond  
21 a reasonable doubt the defendants are guilty of all of the  
22 crimes with which they've been charged.

23           Now, after the defendants' summations, we will have  
24 the opportunity to come back in front of you and speak to you  
25 further about the evidence. And at that time, we'll ask you

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1 to return the only verdict consistent with the evidence and  
2 your common sense: Guilty on all counts as to both  
3 defendants. Thank you.

4 THE COURT: Thank you, Mr. Hein.

5 That brings us to the conclusion of the government's  
6 opening summation.

7 Ladies and gentlemen, we'll take a lunch break. I'm  
8 going to ask you to go back to the jury room at around ten  
9 after four or so.

10 Again, the case is not over. Continue to keep an  
11 open mind. Do not discuss the case amongst yourselves or  
12 anyone else. If you're on social media, radio silence. Don't  
13 use the brief lunch period for an opportunity to conduct  
14 research.

15 Again, we all appreciate your patience, sacrifice,  
16 and cooperation. Again, we'll see you again in less than an  
17 hour.

18 (Jury exits the courtroom.)

19 THE COURT: Okay. We will see you in an hour or so.  
20 Have you decided who's going first?

21 MR. RIOPELLE: Yeah. Mr. Ross is going to go first,  
22 Your Honor. I wonder what Your Honor's view is as to how late  
23 you will sit tonight.

24 THE COURT: We will sit until Mr. Ross is finished.

25 MR. RIOPELLE: Okay. Thank you, Your Honor.

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1           Yeah, because I didn't want to start. I mean, I'll  
2 go until 9:00 if you want me to.

3           THE COURT: No, no. I think --

4           MR. RIOPELLE: The jury will be tired. Yeah.

5           THE COURT: You told me two hours.

6           MR. RIOPELLE: Yes.

7           THE COURT: I can't imagine how we're going to hear  
8 Chuck and then you within a reasonable time.

9           MR. ROSS: That's fine, Judge.

10          MR. RIOPELLE: Thank you.

11          THE COURT: I think that makes sense, unless we get  
12 a big surprise and Mister -- I reserve the right to chat with  
13 you again if Mr. Ross finishes really quickly.

14          MR. RIOPELLE: I hear you, Judge. I understand.

15          MR. ROSS: I'm probably been an hour-and-a-half or  
16 two.

17          THE COURT: If it works out that way, I really don't  
18 plan to -- very good. We'll talk.

19               (Whereupon, a recess was taken at 3:25 p.m.)

20

21

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23

24

25

SUMMATION - MR. HEIN

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1 (In open court, outside the presence of the jury.)

2 THE CLERK: All rise. Court is back in session.

3 Counsel for both sides are present, including the defendants.

4 THE COURT: I found everybody. So, Mr. Ross you're  
5 ready to go?

6 MR. ROSS: Ready to go, Judge.

7 THE COURT: Okay. We'll bring the jury in.

8 (Pause in proceedings.)

9 (Jury enters.)

10 THE COURT: Be seated please.

11 Counsel will stipulate that the jury is present is  
12 and properly seated?

13 MS. JONES: Yes, Your Honor.

14 MR. ROSS: Agreed, Judge.

15 THE COURT: We all concur.

16 Ladies and gentlemen, we are now in the homestretch  
17 of our afternoon session. We will now hear the closing  
18 argument from the round of defense closing arguments.

19 The thing to keep in mind here is that each one will  
20 be separate for their individual defendant, and secondly, once  
21 the closing argument is made on behalf of a defendant and that  
22 counsel sits down, that counsel does not get up to give  
23 another opportunity. So pay careful attention to each of the  
24 closing arguments because that will be the last time you will  
25 hear from each the defendants.

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SUMMATION - MR. HEIN

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1           So to make the first closing argument, I will call  
2 upon counsel for Mr. Discala, Mr. Charles Ross.

3           MR. ROSS: Thank you, Judge.

4           Ladies and gentlemen, I said in my opening statement  
5 that there would be no credible proof beyond a reasonable  
6 doubt that AJ Discala agreed with anyone to commit a crime. I  
7 said the proof would not show that he committed any crime, and  
8 the proof would not show that he acted in bad faith at all.  
9 To the contrary, I suggest that the evidence has proven that  
10 Mr. Discala acted in good faith, that he did not commit any  
11 crimes, and that he had absolutely no bad faith whatsoever.

12           I said in my opening that there would be no credible  
13 proof beyond a reasonable doubt that AJ Discala had any intent  
14 to defraud anyone or any company or anything. I suggest,  
15 ladies and gentlemen, that there are many reasons, many, many,  
16 reasons to doubt the prosecution's case here. There are many  
17 reasons to doubt that AJ Discala agreed with anybody to commit  
18 a crime. There are many reasons to doubt that he intended to  
19 defraud anyone.

20           I suggest to you, ladies and gentlemen, that this  
21 case should not have been brought in the first place. I  
22 suggest there's nothing -- there is nothing back in July of  
23 2014, that could have changed the minds of the FBI that  
24 arrested Mr. Discala, and the prosecutors that believed that  
25 they had proof beyond a reasonable doubt that he was guilty of

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1 anything. There's nothing that could have changed their  
2 minds.

3 The prosecution here has relied on just a torrent  
4 of, a complete torrent of assumption, speculation, conjecture  
5 in an effort to get AJ. This case should never have been  
6 brought, but it's come this far and it's time to end A J  
7 Discala's nightmare and the nightmare of his family.

8 Before we go through the evidence -- and we'll go  
9 through it -- I'd like to thank you all for taking time out of  
10 your lives, for coming in here every day for the past four or  
11 five weeks and listening. I speak for Mr. Discala and  
12 everyone on the defense team because it's such a sacrifice and  
13 you've all made it, and we thank you for it.

14 Now, Judge Vitaliano will soon tell you what  
15 reasonable doubt means. He'll instruct you and he'll tell you  
16 everything about it. The judge will tell you that a  
17 reasonable doubt is a doubt that you can assign a reason to.  
18 It's a doubt that would cause each and every one of you to  
19 hesitate -- to hesitate to take and act in those important  
20 affairs in your own life.

21 So let's do this. I don't want to run through every  
22 single count here again. We have heard that from Mr. Hein.  
23 What I want to do is review with you some of the key elements,  
24 a couple of key elements that I want you to focus on as I am  
25 going through these reasons to doubt the prosecution's case.

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1           And when we do that, ask yourselves are there  
2 reasons to doubt? And I suggest there are many. What are  
3 those reasons to doubt? And I'll suggest -- and we'll go  
4 through it together -- what are those reasons to doubt? Are  
5 the prosecutors here asking you to make leaps of faith? Are  
6 they asking you to make assumptions or to rely on guesswork or  
7 speculation or is there real proof here? I suggest that there  
8 are so many reasons to doubt here, I will go through all of  
9 them with you.

10           Now, as you heard this morning, Mr. Discala's  
11 charged in Count 1 with conspiracy to commit securities fraud.  
12 He's charged in Count 2 with conspiracy to commit mail and  
13 wire fraud. Count 3 charges him with securities fraud in  
14 connection with CodeSmart. Count 4 charges him with  
15 securities fraud in connection with Cubed. And the remaining  
16 counts, as we heard, are wire fraud counts. Those counts are  
17 5 through 10.

18           Judge Vitaliano -- not the Government -- Judge  
19 Vitaliano will instruct you on each and every element that the  
20 prosecution has to prove beyond a reasonable doubt for all of  
21 those charges. I want to focus on two critical elements of  
22 these charges.

23           First, as part of what Judge Vitaliano will instruct  
24 you on about the conspiracy charges, the prosecution must  
25 prove beyond a reasonable doubt that there was an agreement to

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1 participate in criminal conduct in a scheme to defraud.

2 And on the securities and wire fraud charges, they  
3 must prove an actual participation in a scheme to defraud, as  
4 well in the conspiracy to commit securities fraud, they have  
5 got to prove beyond a reasonable doubt to your unanimous  
6 satisfaction at least one overt act.

7 Now, the judge will instruct you that the  
8 prosecution has to prove each and every element beyond a  
9 reasonable doubt. Let's go through why the prosecution has  
10 failed to prove beyond a reasonable doubt that Mr. Discala was  
11 part of any scheme. I suggest the proof does not show that  
12 there were schemes to defraud here. And I suggest the proof  
13 does not show that Mr. Discala intended to defraud anyone.

14 First, although the prosecutors aren't required to  
15 prove this -- it's not in the indictment. They don't have any  
16 burden with respect to proving what witnesses came in here and  
17 said about Location Based Technologies, HRAA, International  
18 Safety Group, Cachet, Soul and others, but those witnesses did  
19 come in, ladies and gentlemen. Remember? Matthew Bell, Marc  
20 Wexler. They all said that Mr. Discala manipulated the prices  
21 of shares in those companies. They put that evidence on.  
22 They don't have to prove it, but they took on that proof.

23 There was absolutely no proof. They have to prove  
24 it, but they put those witnesses on. There was no proof  
25 whatsoever other than the word of witnesses that I suggest to

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1 you are completely unreliable that anything wrong, anything  
2 fraudulent took place in any of those companies, and that  
3 failure, I suggest, ladies and gentlemen, you can take into  
4 account.

5 Now, let's talk first about Staffing Group and  
6 StarStream. Now we heard Mr. Hein's very, very long  
7 presentation, but he zipped right through those two  
8 companies -- played a couple of phone calls, showed you a  
9 couple of charts -- but I suggest that there's no way that any  
10 of you can possibly figure out what any fraud scheme was in  
11 either of those two companies because there was no fraud  
12 scheme. They haven't proved a fraud scheme in StarStream or  
13 Staffing Group beyond a reasonable doubt at all.

14 This table (indicating) -- this table right here is  
15 asking you to take leaps of faith -- leaps of faith and rely  
16 on conjecture and incomplete proof that there was any fraud  
17 scheme at all in either of those two companies.

18 Now, let's start with StarStream. You remember what  
19 Mr. Bini said in his opening statement? He said that  
20 Mr. Discala and others made worthless companies look good.

21 We know -- we all know that StarStream and every  
22 other company charged in the indictment were not worthless.  
23 They had real businesses and real services, and real products.  
24 But we didn't hear anything -- anything about that during Mr.  
25 Hein's almost five-hour presentation.

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1           So I suggest ladies and gentlemen, that the  
2 prosecution in their opening statement and today are just  
3 flat-out wrong about these companies and particularly flat-out  
4 wrong about StarStream.

5           In fact, we know from many witnesses that StarStream  
6 was a real company. It was a movie company. They made  
7 movies. They made well-respected good movies. *The Butler*, by  
8 Oprah Winfrey. Jennifer Aniston was in another film that  
9 StarStream produced and released.

10           Marc Wexler, Mr. Serial Liar, say anything to save  
11 his skin, even told you that he saw a showing of *The Butler*.  
12 This is a real company, ladies and gentlemen. It's not some  
13 worthless thing. It's not some worthless thing that was fixed  
14 up to look good somehow, not at all.

15           Just because Matt Bell mentions StarStream, it's  
16 somehow some kind of fraud scheme? Just because there are a  
17 couple of calls with Bell and Azrak about StarStream, does  
18 that make it a fraud scheme? I suggest no. It does not.

19           Bell, when he got arrested, he lied repeatedly to  
20 the FBI and figured out that the only way that he was going to  
21 get out from underneath these charges and accusations was to  
22 get himself a lawyer, have many meetings with the prosecutor  
23 and figure out a way to serve up AJ Discala on a platter. He  
24 wants to save his himself anyway he can from a long stretch in  
25 the federal prison.

SUMMATION - MR. HEIN

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1           So just because Matt Bell testifies that he claimed  
2 he bought StarStream for his clients' accounts, is that a  
3 fraud scheme? Is that proof beyond a reasonable doubt that  
4 there was some kind of fraud scheme here in StarStream  
5 involving AJ Discala? I suggest no. It doesn't. Not at all.

6           Now, Mr. Discala testified that he invested over a  
7 million dollars in StarStream, and he served on the board of  
8 StarStream for a few months. He had no free-trading stock in  
9 StarStream, at all. Not at all.

10           What kind of stock crook does that? What kind of  
11 stock crook goes on the board of a company? What kind of  
12 stock crook invests in the company? And what kind of stock  
13 crook doesn't have free-trading shares of stock to try to  
14 control the price, so that he can come somehow pump it and  
15 dump it.

16           And that's another thing Mr. Bini said in his  
17 opening. He said that these were pump-and-dump frauds. These  
18 were pump-and-dump fraud schemes. Have they proven -- has  
19 this table proven at all that there was any kind of pump and  
20 dump in StarStream?

21           We heard definitions of pump and dump. We heard  
22 that from the Government's own expert, Ms. Oremland; and  
23 Ms. Oremland said that a pump and dump is where some people  
24 get together and control the offering in a company, in the  
25 securities of a company. Then they make false bids to drive

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1 the price up; and when it's gotten to a certain level where  
2 they all want to sell out, they sell out and leave others  
3 holding the bag. That is not what happened in StarStream.  
4 They have not proven that in any way, shape, or form beyond a  
5 reasonable doubt to any one of you, I suggest.

6 Now, Mr. Discala testified yesterday; and the judge  
7 will tell you, when he charges you on the law, that  
8 Mr. Discala is something called an interested witness. But  
9 that's only common sense, right? He's interested. He's very  
10 interested in the outcome here because of everything that's on  
11 the line. Just because he's an interest witness, of course,  
12 he's interested. It doesn't mean that you just disbelieve  
13 him. You use your common sense, and you figure out whether or  
14 not he's telling the truth.

15 So, what kind of fraudster, what kind of fraudster  
16 would not have control over the stock? He doesn't have any  
17 stock. He was on the board. He invested in the company.  
18 Where's the control in StarStream? I suggest, ladies and  
19 gentlemen, that there is none. That alone, that alone is  
20 reason to doubt the prosecutor's case here. It is.

21 And the judge will charge you that, if you  
22 disbelieve a part of a witness's testimony, a part of the  
23 Government's case, you can throw the whole thing out. I  
24 suggest to you that, based on their proof on StarStream,  
25 that's precisely what you should do. Even Bell testified that

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1 AJ Discala lost money in StarStream. What kind of fraud  
2 scheme is that when AJ Discala, the supposed ringleader, lost  
3 money?

4 Their own expert, Oremland, never even reviewed the  
5 SEC filings for StarStream or the servicing group which we'll  
6 get to in a minute. You don't have that, you don't have  
7 anything to go on about any kind of manipulation in StarStream  
8 or in the staffing group.

9 Jamie Sloan lied repeatedly under oath, lied  
10 repeatedly under oath in her FINRA testimony. She took an  
11 oath. She was asked questions, and she lied time after time  
12 after time. Just because she claimed that she worked with  
13 Marc Wexler on manipulating the stock price of StarStream, are  
14 you going to believe that without more? I suggest that you  
15 just can't, and that's a reason to doubt.

16 Both Sloan and Wexler testified about a cash payment  
17 to Ms. Sloan to buy SSET, to buy StarStream stock from  
18 Mr. Wexler. AJ was not there, but both of them claim that  
19 somehow he knew about this. How could Sloan possibly know?  
20 How could Jamie Sloan possibly know that AJ Discala knew about  
21 this? She didn't know. What, she's some kind of mind reader?  
22 She knows nothing about this, about whether or not AJ knew  
23 about this. He wasn't there.

24 And how can you believe a guy like Marc Wexler?  
25 Marc Wexler is a serial liar. He's a serial liar who will do

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1 anything to save his own skin. Do you think there's anything  
2 that Marc Wexler wouldn't say to keep himself out of the  
3 Federal Pen? I suggest to you that he would say anything to  
4 save his own skin. He had a bunch of "I don't know's," "I  
5 don't remember," "I don't recalls" from Mr. Bowman when  
6 Mr. Bowman cross-examined him; but in a heartbeat,  
7 immediately, when he was asked what he got CodeSmart shares  
8 for, how much did you pay, immediately it was 0.025 cents a  
9 share. He came up with that immediately; but when he's asked  
10 by a defense lawyer what he knows, "I don't recall." "I don't  
11 remember." You can't believe that man beyond a reasonable  
12 doubt for anything.

13 And I suggest, ladies and gentlemen, that there's  
14 just absolutely no proof. Ask yourselves: What's the proof  
15 that StarStream involved any kind of fraud scheme at all? And  
16 I suggest there is none. That's why they zipped over it so  
17 quickly.

18 And there's certainly no proof that there was a  
19 fraud scheme and no proof at all that AJ Discala was in any  
20 way, shape, or form involved in a fraud scheme in StarStream.  
21 No proof beyond a reasonable doubt that he had any sort of  
22 intent to defraud or that he got involved in any kind of  
23 scheme.

24 The same is true for Staffing Group. Again,  
25 Mr. Bini opened and said these were worthless companies that

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1 Mr. Discala and others fixed up to look good but we all know  
2 that StarStream was a real company -- I'm sorry -- that  
3 Staffing Group was a real company. We know that. The  
4 prosecution's dead wrong about this. They opened on it. It's  
5 always been a real company.

6 Even a serial liar like Matt Bell said that he  
7 believed that the Staffing Group was for real. But just  
8 because Matt Bell claims that his clients made money, in the  
9 Staffing Group, does that make it a fraud scheme? Again,  
10 there were a couple of phone calls and that couple of charts  
11 this morning but Mr. Hein zipped right through any proof that  
12 the Government has that the Staffing Group was a fraud.

13 These were all high-risk, high-award investments.  
14 There were public filings to that effect. All of the  
15 investors had access to that information. All of the SEC  
16 filings warned of this.

17 AJ Discala did all kind of due diligence. He  
18 checked out the Staffing Group. In what kind of fraud scheme  
19 would a guy like Matt Bell, the main co-conspirator in this  
20 case, the main alleged co-conspirator in this case, would make  
21 only 1600 bucks?

22 Did their expert, Oremland, say anything about these  
23 match and wash trades in the Staffing Group? Of course, she  
24 didn't. Did she even do one of her charts? We heard about  
25 only one press release in TSGL, and that was from Matt Bell.

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1 The press release said that the company needed money. Come  
2 on. A company needs money and that's supposed to get a bunch  
3 of people interested, have brokers tell their clients, hey,  
4 there's this company, the company really needs money? You  
5 want to invest in that? I don't think that happened. I  
6 suggest to you that that's proof of nothing. What kind of  
7 optimistic outlook is that?

8 Mr. Discala, I suggest, believably told us that he  
9 either gave his free trading shares in the Staffing Group away  
10 or sold them for a penny, nothing, to investors who he was  
11 concerned about, who lost money.

12 Ms. Eckhart, Haley Eckhart, also told us this. Both  
13 she and Mr. Discala told us that AJ had a bunch of shares in  
14 TSGL left over when he got arrested. What kind of control  
15 freak, stock fraudster would do that, hang onto shares? I  
16 suggest, ladies and gentlemen, that these were real companies  
17 that Mr. Discala invested in, worked for, and yes, cared very  
18 much about.

19 Another reason to doubt: The prosecution hasn't  
20 proved at all that the Staffing Group was a fraud scheme, was  
21 a pump and dump. There's no pump. There's no dump. There's  
22 nothing in the StarStream and Staffing Group stock trading.

23 And remember the oh-so-convenient testimony of FBI  
24 Agent Luca. Agent Luca testified about the raid on AJ  
25 Discala's OmniView offices up in Connecticut; and he testified

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1 that agents doing the search and doing the raid just happened  
2 to bump, just happened to bump into Mr. Discala's computer.  
3 And lo and behold, on that screen, that screen that has the  
4 bids, the asks, and everything is TSGL, the Staffing Group.

5 Isn't that just too convenient, ladies and  
6 gentlemen? Does that make any sense at all? I suggest it's a  
7 likely story. Why would AJ Discala be following TSGL in July  
8 of 2014? It doesn't make any sense at all.

9 The indictment actually charged, unlike the  
10 companies that I talked to you about, where people just came  
11 in and said, yeah, he manipulated LBAS, he manipulated Cachet,  
12 these companies are in the indictment. They're in the  
13 indictment. The prosecution has to prove beyond a reasonable  
14 doubt that there was a fraud scheme, that AJ Discala  
15 intentionally acted to defraud others in StarStream, in the  
16 Staffing Group; and they have failed. They have failed  
17 miserably to prove that to you and I suggest that that is a  
18 huge reason, a huge reason to doubt here and you can throw the  
19 entire case out just based on that.

20 (Continued on the next page.)  
21  
22  
23  
24  
25

SUMMATION - MR. HEIN

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1 MR. ROSS: So let's talk about Cubed. Mr. Bini is  
2 wrong again. Cubed was far from a worthless company that was  
3 ginned up somehow to look good. And the opening that the  
4 prosecution put on that Mr. Bini gave us, said that there was  
5 a pump and dump in Cubed. There was a pump and dump. And  
6 this morning Mr. Hein gets up and talks about some kind of  
7 rigging of the stock. They don't know which one is which.  
8 They open and tell you pump and dump, and then this morning  
9 Mr. Hein says, oh, wait a second, it's rigged trading. There  
10 is just no proof at all, ladies and gentlemen, that there was  
11 a pump and dump in Cubed at all. Their claim is just  
12 preposterous and they opened on it.

13 There is no proof that there was any effort to drive  
14 the stock price up with aggressive sham bidding. There's no  
15 proof that there was a big selloff by insiders in the know and  
16 then a drop that left investors holding the bag. That's not  
17 the proof at all. These prosecutors are just way out in left  
18 field, way out of bounds.

19 And, again, this was clearly a real company with a  
20 very, very exciting product. Our witness, David Parker, told  
21 you about his efforts to research the Cubed and figure out  
22 ways to market it. Mr. Discala hired Mr. Parker. If  
23 Mr. Discala just wanted to pull some fraud, why would he hire  
24 someone to go and check and see whether or not this was a real  
25 company? Why would he care about that? Why would he do that?

1 It's another reason to doubt the prosecution's case.

2 Eric Engstrom, truly a remarkable background, a  
3 remarkable background in technology, he checked out the  
4 product and he was super-impressed. But put them aside, what  
5 about the prosecution's own witness, Rui Falcon, what about  
6 her? Isn't she the best witness? One that they put on about  
7 how come Cubed was a real company with real potential. Wasn't  
8 she just the best witness about this? She invested her own  
9 money and money of her clients in the cube. And why did she  
10 do that? Do you think that she did it because she thought  
11 that it was some worthless company? Do you think that she did  
12 it just because she took the word of people that she met with?  
13 No, she didn't take the word of anybody. She had a whole  
14 team, she had a whole team of people that checked out Cubed.  
15 She had an IT lawyer who knew this area who she spoke to and  
16 she learned all about this. She's a graduate of the  
17 University of Chicago. She owns the serious fund with people  
18 who trust her, with people who want her because of her  
19 expertise to invest their money.

20 She flew out to Las Vegas and met with the Whites,  
21 met with Ms. Cane, and she really checked this out. We heard  
22 all about this. The prosecution's own witness didn't rely on  
23 the word of other people, she's not in the business of doing  
24 that. She checked the Cube out and decided that it had  
25 potential. She knew about the mobile-first, the switchover to

1 mobile-first technology and she thought that this was an  
2 interesting area for her to invest in and for her clients to  
3 invest in and, that is, ladies and gentlemen, from the  
4 prosecution's own witness, the best proof that this was a real  
5 company with real potential. It wasn't some worthless thing  
6 that was made and dressed up to look real, otherwise she never  
7 would have committed her money.

8           How can the prosecution claim that this company was  
9 worthless or the product was worthless. Even Matt Bell  
10 testified that he got an iPhone, loaded the Cube on to it,  
11 checked it out, and had investors that were interested who he  
12 did the same thing for and they got to look at it, it was  
13 real. Victor Azrak said he reviewed videos and presentations  
14 on the Cube.

15           There was no testimony about phony press releases.  
16 We heard all about press releases in phone calls and in text  
17 messages. The claim that somehow you've got to have press in  
18 order to get interest in the securities, was there any proof  
19 at all, any proof that there was any false press release  
20 issued about the Cube? I suggest there wasn't. And that's  
21 because the Cube had real potential.

22           Kyleen Cane, a very well respected securities  
23 attorney in the microcap area, she's the one that set up these  
24 escrows that Mr. Hein talked so much about. The proof showed  
25 that Mr. Discala assumed that Ms. Cane did the right and legal

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1 thing with these escrows. The escrows were put in place to  
2 make sure that the stock of this, really, a gem of a startup  
3 company was not going to go to zero before the company had a  
4 chance to get the word out and reach an orderly market for the  
5 trading of its stock. It was a protection against  
6 opportunistic sellers. It wasn't some fraud scheme. It was a  
7 protection against opportunistic sellers who might damage the  
8 stock price before the word could get out.

9 Just because Matt Bell testified he received  
10 restricted shares in Cubed, does that mean that the company  
11 and AJ were involved in some kind of fraud? I suggest that it  
12 doesn't. There's nothing wrong with getting the word out  
13 about a company.

14 Now we all listened to these tape recordings of  
15 Mr. Discala. Does he sound like a jerk? Does he sound like a  
16 guy that's full of bluster, trying to be a big shot? He does.  
17 He sounds horrible. But I suggest that the prosecutors have  
18 completely failed to show you how these tapes, which sound  
19 awful, which sound like a guy just totally full of himself,  
20 are part of a pump and dump scheme in Cubed. This whole thing  
21 that they keep going back to about AJ talking about the  
22 importance of optics. We all know from the proof in this case  
23 that optics don't move a stock price. He's full of bluster.  
24 He wants to come off as a big shot. But these are not  
25 conversations about stock manipulation. Pure and simple there

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1 was no pump and dump like the prosecution opened on in Cubed.

2 I suggest, once again, that we have serial liars  
3 like Matt Bell and Marc Wexler and Victor Azrak who are just  
4 trying to save their own skins. They were coached, they know  
5 they have to save themselves. They know that they have to get  
6 AJ Discala and that they have to please these prosecutors and  
7 they are the ones that testified that this was a manipulation  
8 somehow.

9 The fact -- and Mr. Hein made a big huge deal about  
10 this this morning, that the stock price spiked from five to  
11 seven is an indicator that there was not control, that there  
12 was not control in the Cubed.

13 And what about all these witnesses that testified to  
14 the formation of Northwest Resources, the company that merged  
15 with Cubed. There was no proof, there was absolutely no proof  
16 that AJ Discala knew anything about what went on in Northwest  
17 Resources. He had every right to believe that Kyleen Cane  
18 knew what she was doing and would do the legal and right  
19 thing. The evidence shows that Mr. Discala acted in good  
20 faith in believing in Kyleen Cane.

21 Her own witnesses told us that she's one of the best  
22 lawyers in this area, one of the most respected lawyers to  
23 represent small companies dealing in microcap stocks. The  
24 escrows were just a way to protect, to release stock into the  
25 marketplace in an orderly way, to give this really good

1 company a chance to succeed and a chance to bring about an  
2 orderly market.

3           We know that AJ Discala got restricted shares early  
4 on in the Cubed. That meant he couldn't pump and dump this  
5 case, he couldn't pump and dump the stock in Cubed. There was  
6 no pumping and there was no dumping. The restricted shares  
7 that he and everyone had made this an investment in a company  
8 that they believed had potential. The SEC filings clearly  
9 stated, absolutely clearly stated that this investment in this  
10 company was a big risk. Where is the misleading statement in  
11 that? Investors knew that this was a high risk, high reward  
12 area. They had clear warning. And there is no reliable  
13 evidence here that there were any real matched and washed  
14 trades going on. The government's now adjusting their theory  
15 here to say it somehow rigged, but these aren't matched  
16 trades, these aren't washed trades and the judge will tell you  
17 what matched and washed trades are.

18           The charts just don't match up. And I suggest that  
19 all of this is reason to doubt the prosecution's case in  
20 Cubed, there is no pump and dump. The trading just does not  
21 show it.

22           The proof shows that Mr. Discala was involved in  
23 helping to raise money for the Cubed by doing a bridge loan  
24 and a pipe. And we heard all kinds of testimony that there's  
25 nothing wrong with a bridge loan. There's nothing wrong with

1 a pipe. And somehow the prosecutors want you to believe that  
2 Mr. Discala controlled the bridge and controlled the pipe  
3 investors 'cause he knew many of them. But where else do you  
4 find investors but from people you know, business associates,  
5 family members. Again there's just -- this is proof of  
6 nothing. This is proof of nothing.

7 The escrow accounts. Mr. Hein made a big deal about  
8 stock certifications not being given to investors. They had a  
9 percentage, they had a percentage ownership interest in these  
10 escrow set-ups that Ms. Cane put together and Mr. Discala  
11 relied on in good faith. He relied that they were the right  
12 and lawful thing to do. There's absolutely no proof that the  
13 stock price was driven up to make some sort of windfall  
14 profit. This is a company that had potential, that was doing  
15 well and the escrows were designed to make -- to allow the  
16 company to succeed.

17 There is no proof at all that AJ Discala made any  
18 money here in the Cubed, no proof, otherwise they would have  
19 shown the profits. Mr. Hein went to great lengths to talk  
20 about profits. Did you hear word one about AJ Discala  
21 profiting at all in Cubed? There's only one company that AJ  
22 Discala made any money on and that is CodeSmart. Otherwise  
23 the proof shows that he lost money and the proof shows that  
24 overall on a cash basis he lost money on everything. He lost  
25 over a half a million dollars on everything. He didn't make



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1 money here. What kind of stock fraudster, what kind of stock  
2 crook completely fails to make any money?

3 Investors lost money in the Cubed. I suggest to  
4 you, ladies and gentlemen, that investors lost money here  
5 because the FBI and the prosecutors went out and made arrests  
6 that shouldn't have been made, not that there was some sort of  
7 pump and dump scheme. Cubed was not a fraud scheme at all.  
8 In fact, Mr. Engstrom told us that Cubed and Scanbuy were to  
9 work together. You'll remember the proof about Scanbuy.  
10 You'll recall that this was a product information scanning  
11 service that had over 11 and a half million users, 11 and a  
12 half million users. The idea was to have the Cube and Scanbuy  
13 work together. And they would have provided a revolutionary  
14 service to mobile application users. Both companies had  
15 major, major pipelines of contracts with major companies. And  
16 it's truly ashame that all of this was cut short by a case  
17 that never should have been brought in the first place.

18 So let's talk about CodeSmart. Again, CodeSmart was  
19 very real, and I'm sure you'll recall that. It was a real  
20 company, with a real service. It was a medical coding company  
21 that was going to provide training for the changeover from one  
22 coding system to another, from ICD-9 to ICD-10. They had a  
23 real curriculum and they had arrangements and agreements with  
24 schools to provide this training. The CodeSmart transaction  
25 was brought to Mr. Discala as a prepackaged deal.

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1           You'll remember the testimony, Jeff Auerbach, a  
2 securities promoter, brought this deal to Mr. Discala.  
3 Everything was prepackaged. Mr. Salvani, Mr. Walsh they were  
4 all involved. Again, there is nothing wrong about Mr. Discala  
5 knowing of potential investors and offering them the CodeSmart  
6 opportunity. All of the people that were involved in the  
7 early going were business associates and people who brought  
8 value to the company. They were family members, they were  
9 friends, they were people that AJ Discala did not have some  
10 sort of nefarious control plan over. There is nothing wrong  
11 with what was being done.

12           Again, these investors received restricted stock,  
13 that's stock that we all know can't be traded. That is a  
14 commitment, that's a long-term commitment by people who  
15 believed in CodeSmart. Mr. Discala had restricted shares.  
16 Restricted shares are not what you want if you want to make a  
17 quick buck, we know that.

18           The prosecution has failed to prove any intent on  
19 Mr. Discala's part to defraud anyone. He acted in good faith.  
20 He tried his best, he tried his best to protect CodeSmart  
21 because he believed in that company. He had investors sign  
22 real legal contracts. We heard about those contracts. The  
23 LU/LO contracts, Lock-up/leak-out agreements. We heard that  
24 before the investors could sign off and get their stock they  
25 had to sign these LU/LOs. It's an effort to protect the

1 company from opportunistic people just selling off, and these  
2 were binding contracts. And we heard about how these legal  
3 documents that Mr. Discala put in place were just cynically  
4 and routinely disregarded by people who were interested only  
5 in making money at the expense of this really promising  
6 company.

7           Once the trading began in ITEN stock, as the price  
8 began to rise, we heard that Matt Bell needed a winner. We  
9 heard that Matt Bell, because he stuffed his own clients'  
10 accounts with Location Based Technology stock and HRAA, needed  
11 to make some money. We heard that Mr. Discala had lost money  
12 in Soul and Vibe.

13           Many of the witnesses, we all know from the proof  
14 that we've heard about how selling a stock makes the price go  
15 down. We all heard about that. So if Mr. Discala was such a  
16 controlling, kingpin of a stock manipulator, a control freak  
17 fraudster, why was he selling at the beginning? Isn't the  
18 whole theory of a pump and dump that you want to bid the price  
19 up, buy the stock to make it go up and once you hit a certain  
20 level, you sell it off. If AJ was in control, really in  
21 control of the stock price here, how come he's buying when the  
22 stock first starts trading. It doesn't make sense. If he's  
23 in control he waits until it hits the high, sells off, and  
24 then makes a huge amount of money. This is a serious reason  
25 to doubt the prosecution's case, it really is. Think about

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1 it, ladies and gentlemen, that's the proof. We didn't hear  
2 anything, any detailed information about trading patterns,  
3 about AJ Discala's trading patterns. What we know is that he  
4 sold at the beginning of trading. How is that a pump? How is  
5 that a pump at all? You sell your stock that's not going to  
6 drive the price up.

7           And we heard evidence that Joe Salvani, who Victor  
8 Azrak called Schtup-alvani, and Dan Walsh who Victor Azrak  
9 called Scam Walsh were involved in CodeSmart and when that  
10 stock price rose, they sold that stock like crazy. They sold  
11 that stock like crazy. And there were other short sellers  
12 that sold the stock. And you'll remember that one of the  
13 reasons why CodeSmart thought that their training services  
14 were important was that there was a mandatory changeover from  
15 ICD-9 to ICD-10 that was set back a year. It was supposed to  
16 happen in the fall of 2013 but it got put back until the next  
17 year, the fall of 2014. Ask yourselves, isn't that a reason  
18 why the stock price might have gone down? Isn't that a  
19 reason? You got Salvani, you got Walsh selling and selling to  
20 drive the price down. You have short sellers doing the same  
21 thing. You have people that signed lock-up/leak-out  
22 agreements, those legal contracts. They signed those legal  
23 contracts, they just ignored them. What kind of control did  
24 AJ Discala really have? I suggest he had no control at this  
25 point. He had no control. And what did he do? He bought.

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1 He bought. Why did he do that, why did he do it? Because he  
2 believed in the company. He wanted to buy to try to stave off  
3 this massive selloff. This is a reason to doubt the  
4 prosecution's case here, it really is, ladies and gentlemen.  
5 Because what stock fraudster is going to sell at the beginning  
6 and buy when the price is coming down? There's just no  
7 reasonable explanation for it. None.

8           The proof shows that Mr. Discala was not in control  
9 at all. And for there to be a scheme that he was part of,  
10 Mr. Hein said this is a case about control, where is AJ  
11 Discala's control? It's not there. It's a reason to doubt.  
12 It's a serious reason to doubt.

13           And what about the press releases. Mr. Hein made a  
14 big deal about these press releases. I suggest that the proof  
15 shows that it was Ira Shapiro that was responsible for the  
16 press releases. The prosecutors dragged Rose Mulryan in here  
17 from Ramapo to show how the press release was somehow phony,  
18 that Ramapo press release. It turns out the press release was  
19 just sent out early. When Ms. Mulryan complained, Mr. Shapiro  
20 was the one that apologized. It was clearly an accident. It  
21 was not any sort of intentional misrepresentation that AJ  
22 Discala somehow seized on to make money. It was an accident.

23           (Continued on the next page.)  
24  
25

SUMMATION - MR. HEIN

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1           MR. ROSS: There are 50 press releases, 50 of them  
2 in evidence. They came in when I was examining Mr. Bell.  
3 There isn't a single one of them that are phony or false. And  
4 they dragged Ryan Yarosh in here from SUNY Binghamton to say  
5 there was somehow some kind of phony press release that said  
6 that Code Smart had an exclusive deal. Well, they had a deal.  
7 They had an understanding that SUNY Binghamton would provide  
8 training. The mistake was exclusivity, that somehow some kind  
9 of serious misrepresentation of the market, Mr. Discala has no  
10 clue about that. It's Mr. Shapiro that was involved in these  
11 press releases. And the two that the Government wants you to  
12 believe were phony, was a mistake, ladies and gentlemen. It  
13 wasn't like they made it out of whole cloth. They had  
14 arrangements with these two schools. AJ was not in a position  
15 to have any clue that there was any falsehood. They were  
16 mistakes.

17           The prosecutors don't want to talk about the  
18 promissory note between Mr. Shapiro and Mr. Discala, that  
19 somehow they claim turned into this money that Mr. Discala  
20 gave Ira Shapiro so he could come out with a press release  
21 saying that he put money into Code Smart and somehow that is a  
22 reason for investors to rely on that.

23           This was nothing but a loan, ladies and gentlemen.  
24 Mr. Shapiro said he needed money; Mr. Discala loaned him  
25 money. It had nothing to do with a bribe or money to invest

1 in Code Smart so there could be some phony press release  
2 issue. It was a loan.

3 Oremland, their own expert, told us about the pump  
4 and dump. It's about control, she said. And where is  
5 Mr. Discala's control? You buy, buy, buy to drive the stock  
6 price up, and he was selling. You sell, sell, sell at the top  
7 to make money, and he was buying. It doesn't make sense.  
8 It's a major reason to doubt.

9 This was not some tightly organized fraud  
10 conspiracy, it just wasn't. It wasn't. Mr. Discala had no  
11 control.

12 All of the SEC filings made disclosures about risk.  
13 And you heard that the company made voluntary disclosures  
14 about this 5 percent issue. There was no requirement at all  
15 that Omni View had at the time of the filing to do this.  
16 Under Rule 13D and Rule 12G there was just no requirement at  
17 that point.

18 Oremland tried to tell us that AJ had some sort of  
19 ownership interest in the company, but he didn't. It's right  
20 there in the Fidelis and Omni View 8K. Anybody could go  
21 online look it up and see.

22 And ladies and gentlemen, it was Darren there in  
23 Ofsink, the lawyer, who did these filings. I suggest  
24 Mr. Discala had every right to believe that Mr. Ofsink the  
25 lawyer, would make these filings properly.

SUMMATION - MR. HEIN

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1 All these texts between Mr. Discala and Mr. Bell are  
2 just examples of Mr. Discala getting the word out, talking to  
3 brokers, letting them know that there are opportunities for  
4 their clients. Nothing more.

5 The proof shows that in the Autumn of 2013, after  
6 the Government somehow claims that AJ Discala was involved in  
7 a very controlled pump and dump, that in the Autumn of 2013,  
8 AJ goes back in, tries to go back in to Code Smart and turn  
9 the company around to refinance the company. You heard that  
10 testimony. What kind of stock fraudster does that?

11 Wouldn't he just pump and dump the company and leave  
12 it for dead? How come he's going back in there? How come  
13 he's proposing board members to Ira Shapiro? Men that knew  
14 the company, men that had been involved, and try to refinance  
15 Code Smart. What control freak stock fraudster would do that?

16 He got two men on the Board of Directors and was  
17 trying to get a third so they could do something about saving  
18 this company that had such a good service, such a good  
19 service.

20 And Ira Shapiro, Ira Shapiro was the one that  
21 blocked all this with his super voting rights. Blocked it  
22 all. Fired AJ Discala, fired Omni View, who had come back in,  
23 fired them. And what did AJ Discala do? He hired lawyers.  
24 He hired Joe Pastore's firm to bring a lawsuit against Code  
25 Smart to try to refinance a company that he believed in.



SUMMATION - MR. HEIN

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1           The proof is in the case, ladies and gentlemen.  
2       What stock fraud enter would ever do that? It doesn't make  
3       sense. It's another reason to completely doubt the  
4       prosecution's case. Very significant. So let's look at some  
5       of other witnesses.

6           Marleen Goepel testified she was AJ's admin  
7       assistant. I suggest to you that the Government is the one  
8       that convinced her to plead guilty. Why? She tried to claim  
9       \$1.2 million worth of losses on her taxes. She snapped that  
10      cooperation agreement up real quick to get out from underneath  
11      that.

12           She came in here and tried to tell you that she  
13      tried to hide Mr. Discala's 5 percent ownership interest in  
14      Code Smart. But if you look at the filings, 2 percent of the  
15      company were in her name, 2 percent were in AJ's name, we get  
16      4 percent. There is not even 5 percent. And Omni View was  
17      not required to make that filing. The Government didn't  
18      bother to explain that.

19           Darren Ofsink, the lawyer, who Mr. Discala had every  
20      reason to believe was doing the legal and right thing, he's  
21      the one that decided to disclose it, and he's the one that  
22      worked on those disclosures. Omni View disclosed, Fidelis  
23      disclosed. AJ's office was listed on everything. What kind  
24      of stock fraudster hides in this way?

25           The Government wants you to believe that AJ Discala

SUMMATION - MR. HEIN

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1 somehow took advantage of Ms. Goepel, hid his own shares in  
2 the pool shares that had her name on it. I suggest it's the  
3 prosecution that took advantage of Ms. Goepel will.

4 She left Omni View in less than a year. But not  
5 before has Halcyon Cabot said you owe us \$600,000. She  
6 claimed it wasn't hers, but it was in her name. It was in her  
7 name. And what happened to that? AJ made that payment. He  
8 took care of his assistant. She didn't have to pay anything,  
9 not one cent out of her pocket. And she stayed on. She  
10 continued to work with him.

11 Mark Wexler, he is a serial lawyer, ladies and  
12 gentlemen, a serial liar. He wants to help himself to a  
13 no-jail sentence here, and this is the only way he can do it.  
14 He's in trouble. He knows he tried to bribe Sloan. He said  
15 he had no idea what Code Smart did, and that's simply isn't  
16 true. AJ knew. AJ believed in Code Smart.

17 Matt Bell, when he's first arrested he's shaking in  
18 his boots. He lies repeatedly to the FBI. He says that there  
19 was no control over the stock. He told them that there was no  
20 grand scheme. He told them that AJ Discala did not control  
21 the stock. He told the Government that he always talked to  
22 his clients before he got them to invest, talked to them about  
23 their accounts. He said he even called up a hospital in  
24 Texas, in San Antonio, and found out that Code Smart did have  
25 a deal with the hospital for training. And then he finds out

SUMMATION - MR. HEIN

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1 that he's in big trouble so he hires a lawyer, and he starts  
2 lying again. He starts lying to save his skin. And when his  
3 clients were complaining, what happened? They got shares at  
4 14 cents that were supplied by AJ Discala. What kind of stock  
5 fraudster does that?

6 This was in 2014. No one had any idea that we'd be  
7 pouring over text message after text message, phone call after  
8 phone call.

9 Bell saw the Cubed product. He talked about that.  
10 This was a real company. We heard from him. That it was Joe  
11 Salvani and Dan Walsh that blocked, that tried to block, along  
12 with Ira Shapiro, AJ Discala's effort to take Code Smart back  
13 and try to make sure that this company with a good service was  
14 able to make money and able to continue to train people.

15 And how did Mr. Bell, the main conspirator, the  
16 person that the Government claims was the main conspirator  
17 here, how did he do? He made \$1,600, \$1670 in TSGO. He lost  
18 \$7,254 in SSET. And he made about 99 bucks in CRPT. But  
19 every single word out of his mouth was manipulation. What  
20 kind of fraud scheme would have the main conspirator do this  
21 kind of profiting? He made basically no money here. I submit  
22 to you that he was coached.

23 We heard from Mr. Mokros, the Empire Stock transfer  
24 agent. He kept a running tab on who owned stock in a stock at  
25 any given time. What did he tell you, he told you Mrs.

SUMMATION - MR. HEIN

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1 Discala and Omni View had restricted shares of Cubed. Why  
2 would they do that if they wanted to run a fraud scheme?  
3 Restricted shares just can't be used. We know that.

4 And he also told you that there was nothing wrong  
5 about a reversed merger, absolutely nothing. There was  
6 nothing illegal about a shell company. The Government wants  
7 you to believe that there was something wrong with this whole  
8 process. And it's done everyday. It's usual, that we what  
9 heard from Mr. Mokros. It doesn't matter whether the shell  
10 company is a barbecue sauce company, a hula hoop factory, or a  
11 kite design business. There is nothing that requires that a  
12 tech company find a tech shell, or a medical coding company  
13 find a medical coding shell. It's just total nonsense.

14 These preliminary transactions in both Cubed and  
15 Code Smart, nothing wrong with them. Ms. Oremland, just  
16 cherry-picked the charts that she drew up. She had in charts  
17 that we saw this morning select accounts. That's the perfect  
18 name for them, because who selected the accounts that were  
19 analyzed by Ms. Oremland, who selected them? The prosecutors  
20 did. And what accounts did they select to compare volume, to  
21 compare price, to compare who was involved? The prosecutors  
22 selected them. They are not even trying to get you the full  
23 picture of what happened here.

24 Look at the charts, they are really not proving  
25 anything. They are select accounts based on select days and

1 that's the best they could do. There are no real wash trades.  
2 There are no real match trades here. They tried to pull it  
3 together in these charts. It's just not there.

4 And SEC accountant, Mr. Ferrante, he only looked at  
5 the four companies in this case, completely ignored the other  
6 companies that we've heard about. Even though Soul had been  
7 smack dab in the middle of Code Smart trading, we hear nothing  
8 about an analysis of that. The Government, the prosecutors,  
9 are not trying to give you the full picture here.

10 Victor Azrak, lies to the FBI after he's arrested.  
11 He gets a lawyer. He knows he's got to save his own skin. He  
12 lies some more to you here in this courtroom. He's a kid.  
13 His dad is very wealthy and very, very successful,  
14 \$100 million net worth. And he needs to get out from  
15 underneath a 25-year jail sentence, maximum 25-year jail  
16 sentence that he's facing.

17 Now at the end of the day, ladies and gentlemen, and  
18 all of this is in evidence in trading records, in bank  
19 statements, when you add up the pipe investments, the bridge  
20 loans, the public and private trading, legal fees, cash  
21 expenses, on all of the four companies named in the  
22 Indictment, on a cash-in cash-out basis, AJ Discala loses  
23 money. He losses half a million dollars in money. And when  
24 he's arrested, and you can see this in the bank records, to  
25 his name he's not some multi-millionaire, to his name he's got

1 \$183,000.

2 I'm almost done. Like the Judge said, the  
3 prosecution gets to go last. If they make an argument that  
4 you all think I would have made, please think about how I  
5 might respond to that argument. Because I don't get to talk  
6 to you again.

7 Remember, when I asked you in my opening statement  
8 to treat your service here on jury duty like you would in  
9 matters of your own lives which are important, to take it real  
10 seriously, and I know you all have. To treat AJ Discala's  
11 case with the same seriousness as you would in making a  
12 decision in your own lives which is important. I asked you to  
13 do that and I know you all are doing that.

14 But Judge Vitaliano will tell you, that a reasonable  
15 doubt, is one that would cause you to hesitate in making a  
16 decision in your own lives. That's important. And that's  
17 what reasonable doubt is.

18 It's like the decision to get married. It's a  
19 decision that you make once in your life or twice.

20 I suggest to you that all, these reasons to doubt  
21 that I've been talking with you about today, would cause you  
22 to hesitate, to hesitate in matters in your own lives that are  
23 important to you. I suggest that you would not rely on the  
24 assumptions, the speculations the, leaping of faith that  
25 prosecutors want you to make here in trying to decide whether

1 or not to make a life-long commitment. You just wouldn't.  
2 You wouldn't rely on these witnesses. You wouldn't rely on  
3 this proof. The reasonable doubts, the doubts that I  
4 suggested to you today are reasons to hesitate, are reasons to  
5 hesitate in making a decision that's important in your own  
6 lives.

7           Some weeks from now somebody might ask you what was  
8 it like to be on jury duty. And your service is going to be  
9 over. It's going to be over and you could talk to them and  
10 you can tell them. Justice is done in this country, like the  
11 Judge has told you, by people, by people like each and every  
12 one of you. You all should just be intensely proud. You  
13 should be intensely proud that you were selected to serve on  
14 this jury. And when your friends ask you what was it like,  
15 what was it like to be on jury duty? You could look them in  
16 the eye, you can look them in the eye and say I was part of  
17 justice. I was part of justice. That's what it was like.

18           Sometimes justice is convicting the guilty.  
19 However, if you have a reasonable doubt and, I have suggested  
20 to you so many reasons to doubt, then justice is acquitting AJ  
21 Discala. If you have a reasonable doubt here, justice is  
22 acquitting AJ Discala, and ending his nightmare. And the  
23 proof shows so many reasons to doubt. I've tried really hard  
24 to show you these reasons to doubt.

25           We all on AJ's defense have fought really hard, have

1 fought really hard for him. And I've tried very hard to show  
2 you these reasons. And it's been an awesome responsibility  
3 for me, for everyone, for all the lawyers on the defense team,  
4 it's been an awesome responsibility. But you know what I'm  
5 going to do now, I'm going to turn that responsibility over to  
6 you all. And I have only one request, when I hand it to you,  
7 I ask you to do one thing, please treat it gently and with  
8 respect, gently and with respect.

9 And if you do that, and I know you will, because  
10 you've been here every single day, I know you will, and I  
11 suggest that there is only one verdict in this case, and that  
12 verdict is that AJ Discala is not guilty of every single  
13 charge in this Indictment. Thank you so much.

14 THE COURT: Thank you, Mr. Ross.

15 Ladies and gentlemen, that brings us to the  
16 conclusion of today's work. As you know, from what I've told  
17 you, you have summation tomorrow on behalf of Ms. Cane.  
18 You'll have rebuttal from the Government. And you'll have  
19 final instructions that I have prepared for you that we'll  
20 give you, the law that you have to apply to the facts as you  
21 find them.

22 Our schedule will probably be an extended day again  
23 tomorrow, that probably won't be much of a surprise to you.  
24 Again, we're trying to make this case as efficient and as fair  
25 as we can, and try to minimize the amount of time that you



1 spend away from things that are important to you.

2           You can also plan on tomorrow that, remember very  
3 early in the case I said when I sent you out to lunch no one  
4 was going to buy you lunch, well tomorrow we're going to buy  
5 you lunch. We're also going to make you stay in the jury  
6 room. But we're going to provide lunch as we head into the  
7 deliberation phase of the case. But we're not there yet.

8           So what does that mean, that means that you still  
9 have an open mind. You're to keep an open mind. You're  
10 directed to keep an open mind. You're directed not to discuss  
11 the case amongst yourselves or with anyone else. To the  
12 extent there are any media accounts about the case, you're  
13 directed to shut that all out of your mind, ears and eyes.  
14 You're also urged, as I do every night, to turn away from  
15 media accounts of any court proceeding for fear that you will  
16 be confused by something you hear there as opposed to what  
17 your responsibilities are here. You're not to use the recess  
18 period as an opportunity to do any research of any kind,  
19 electronic or otherwise. And if you're on social media  
20 platforms or any other way like us old folks, using the  
21 telephone, you're on radio silence. You're not to lead on  
22 that you're even a juror or anything of course that is  
23 directly about your jury service in this case or any of the  
24 personalities in it.

25           We do all appreciate your attentiveness. We

1 appreciate your patience, your corporation, and your  
2 sacrifice. We look forward to seeing you tomorrow in the  
3 central jury room 9:45. We'll get started as close to ten as  
4 we can.

5 Have a pleasant evening.

6 (Jury exits the courtroom.)

7 THE COURT: Any housekeeping?

8 MR. BOWMAN: I received a call two hours ago, my  
9 wife had been an automobile accident. I think she's okay.

10 THE COURT: She's okay?

11 MR. BOWMAN: I don't know. She's in the hospital  
12 now. I may be late tomorrow.

13 THE COURT: Can we start without you?

14 MR. BOWMAN: I'm sure you will.

15 THE COURT: Mr. Discala's well-staffed. We all wish  
16 good things for your wife, hopefully you'll bring us good news  
17 tomorrow.

18 MR. RIOPELLE: I just wanted to confirm that court  
19 is taking Monday and Tuesday off next week?

20 THE COURT: Yes. To the extent that the jury is  
21 continuing its deliberation, I have to be in Washington on  
22 Monday and Tuesday. If the jury is still deliberating, we  
23 will resume on Wednesday.

24 MR. RIOPELLE: Very good. I had someone scheduling  
25 something on Tuesday.

1           THE COURT: Right now we have one item that we were  
2 scouring the charge. One of those unanimouslies we put in  
3 yesterday. Ben will read it. It's the one that began in sum.  
4 This is what we did, we took the unanimously out and it was  
5 like a couple of sentences and added something, a new  
6 sentence, at the end.

7           THE LAW CLERK: In sum, a defendant who is an  
8 understanding of the unlawful character of the conspiracy must  
9 have intentionally engaged, advised or assisted in it for the  
10 purpose of furthering the illegal undertaking. He or she  
11 thereby became a knowing and willing participant in the  
12 unlawful agreement; that is to say, a conspirator. Again, an  
13 act is done willfully if done voluntarily and intentionally  
14 and with the specific intent to do something the law forbids;  
15 that is to say, with a bad purpose either to disobey or  
16 disregard the law. These are findings you must make  
17 separately and unanimously with respect to each defendant.

18           MR. RIOPELLE: That sounds fine.

19           MS. JONES: That's fine, your Honor.

20           THE COURT: Just in case you were looking for it.  
21 All right, good evening. We look forward to seeing you  
22 tomorrow.

23           (Proceedings adjourned at 5:55 p.m. to resume on  
24 May 03, 2018 at 10:00 a.m.)  
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